



Finance & Tax Committee

**Friday, March 24, 2006
8:00 AM – 12:00 PM
404 HOB**

MEETING PACKET



The Florida House of Representatives

Fiscal Council

Finance & Tax Committee

Allan G. Bense
Speaker

Fred Brummer
Chair

AGENDA

March 24, 2006

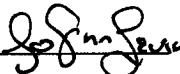

8:00 AM – 12:00 PM

404 HOB

- I. Chairman's Remarks
- II. **HB 29** – Tax on Sales, Use, and Other Transactions by Sansom.
- III. **CS/HB 247** – Beverage Law by Bogdanoff.
- IV. **HB 691** – Tax on Sales, Use, and Other Transactions by Negron.
- V. **PCB FT 06-06** – Financial Matters and Planning and Budgeting by Finance & Tax..
- VI. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Sansom and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Levin 	Diez-Arguelles 
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides that no sales tax will be collected: (1) on the sale of books, clothing, wallets, or bags including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$50 or less; or, (2) on the sale of school supplies having a selling price of \$10 or less during the nine-day period of July 23 through July 31 of 2006.

Specifically, the bill:

- defines "books" as a set of printed sheets bound together and published in a volume;
- excludes from the definition of "book" newspapers, magazines, or other periodicals,
- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, umbrellas, or handkerchiefs;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply within theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

The bill provides an appropriation to the Department of Revenue of \$206,000 in FY 2006 – 07 to administer the bill.

The fiscal impact of the bill is expected to be approximately negative (\$32.1 million) in state revenues and negative (\$7.2 million) in total local revenues during FY 2006 – 07.

The estimated reduction in Local Option Sales tax by this bill is a negative (\$3.1 million). The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

The bill is effective July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0029.FT.doc
DATE: 2/7/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes - The bill eliminates the sales tax on many back-to-school items during the period of the sales tax holiday, which will be the last nine days of July 2006.

B. EFFECT OF PROPOSED CHANGES:

Current Law:

Section 212.05, Florida Statutes, provides that a sales and use tax be imposed on the retail sale, storage, or use of tangible personal property. The sales tax rate is 6%. Chapter 212, Florida Statutes, also lists items and transactions that are exempt from sales and use tax. Under current law, the retail sale of clothing, wallets, bags, and school supplies is subject to sales tax.

History of Sales Tax Holidays:

Chapter 98-341, Laws of Florida, the Florida Family Tax Relief Act of 1998, provided that apparel, including footwear, with a taxable value of \$50 or less, was exempt from the imposition of sales tax during the period from 12:01 a.m., August 15, 1998, through midnight, August 21, 1998. The Act defined "clothing" to mean any article of wearing apparel, including footwear, intended to be worn on or about the human body. For purposes of the Act, "clothing" did not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles.

Chapter 99-229, Laws of Florida, the Florida Residents' Tax Relief Act of 1999, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$100 or less during the period from 12:01 a.m., July 31, 1999, through midnight, August 8, 1999. The tax-free week was earlier in 1999 than in 1998 to allow families shopping for school clothing an opportunity to take advantage of tax savings prior to the start of the school year. An appropriation of \$200,000 was provided to the Department of Revenue to administer the Act in 1999.

Chapter 2000-175, Laws of Florida, the Florida Residents' Tax Relief Act of 2000, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$100 or less during the period from 12:01 a.m., July 29, 2000, through midnight, August 6, 2000. An appropriation of \$215,000 was provided to the Department of Revenue to administer the Act in 2000.

Chapter 2001-148, Laws of Florida, the Florida Residents' Tax Relief Act of 2001, created an exemption from sales tax during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001, for: 1) clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$50 or less; and 2) school supplies having a taxable value of \$10 or less per item. An appropriation of \$200,000 was provided to the Department of Revenue to administer the Act in 2001.

Chapter 2004-73, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$50 or less or upon school supplies having a selling price of \$10 per item or less during the nine-day period of July 24 through August 1, 2004.

Chapter 2005-271, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$50 or less or upon school supplies having a selling price of \$10 per item or less during the nine-day period of July 23 through July 31, 2005.

Proposed Changes:

The bill provides that no sales tax will be collected upon books, clothing, wallets or bags, including handbags, backpacks, fanny packs, and diaper bags having a selling price of \$50 or less per item, or upon school supplies having a selling price of \$10 per item or less during the nine day period of July 23 – July 31, 2006:

- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, handkerchiefs, and umbrellas;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

C. SECTION DIRECTORY:

Section 1. Creates a nine-day period of July 23 through July 31, 2006 during which clothing, wallets, bags, and school supplies are exempt from sales tax. The section defines the terms "books," "clothing" and "school supplies" and provides an exception for certain types of establishments. The section provides rulemaking authority to the Department of Revenue.

Section 2. Provides an appropriation of \$206,000 to the Department of Revenue to administer the Act.

Section 3. Provides the Act is effective July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 2006-2007</u>
General Revenue	(\$32.0 m)
Solid Waste Management Trust Fund	<u>(\$.1 m)</u>
Total State Impact	(\$32.1 m)

2. Expenditures: The bill contains an appropriation of \$206,000 from the General Revenue Fund to the Department of Revenue for the administration of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	<u>FY 2006-2007</u>
Revenue Sharing	(\$1.0m)
Local Gov't half-cent	(\$3.1m)
Local Option	<u>(\$3.1m)</u>
Total local impact	(\$7.2m)

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Retailers selling the items exempt from sales tax during the holiday may experience an increase in sales and sales volume as a result of the tax holiday.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The estimated reduction in the Local Option Sales Tax by this bill is \$3.1 million. The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate, and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

2. Other: None

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt rules to implement the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The change in first class postage rate from 37 cents to 39 cents will require the Department of Revenue's costs to administer the sales tax holiday to increase from \$206,000 for FY 05-06 to \$210,540 for FY 06-07.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to tax on sales, use, and other
3 transactions; specifying a period during which the sale of
4 books, clothing, and school supplies shall be exempt from
5 such tax; providing definitions; providing exceptions;
6 authorizing the Department of Revenue to adopt rules;
7 providing an appropriation; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. (1) No tax levied under the provisions of
12 chapter 212, Florida Statutes, shall be collected on the sale
13 of:

14 (a)1. Books, clothing, wallets, or bags, including
15 handbags, backpacks, fanny packs, and diaper bags, but excluding
16 briefcases, suitcases, and other garment bags, having a sales
17 price of \$50 or less per item during the last 9 days of July
18 2006.

19 2. As used in this paragraph, the term:

20 a. "Book" means a set of printed sheets bound together and
21 published in a volume. For purposes of this paragraph, the term
22 "book" does not include newspapers, magazines, or other
23 periodicals.

24 b. "Clothing" means any article of wearing apparel,
25 including all footwear, except skis, swim fins, roller blades,
26 and skates, intended to be worn on or about the human body. For
27 purposes of this paragraph, the term "clothing" does not include
28 watches, watchbands, jewelry, umbrellas, or handkerchiefs.

29 (b)1. School supplies having a sales price of \$10 or less
30 per item during the last 9 days of July 2006.

31 2. As used in this paragraph, the term "school supplies"
32 means pens, pencils, erasers, crayons, notebooks, notebook
33 filler paper, legal pads, composition books, poster paper,
34 scissors, cellophane tape, glue or paste, rulers, computer
35 disks, protractors, compasses, and calculators.

36 (2) This section does not apply to sales within a theme
37 park or entertainment complex as defined in s. 509.013(9),
38 Florida Statutes, within a public lodging establishment as
39 defined in s. 509.013(4), Florida Statutes, or within an airport
40 as defined in s. 330.27(2), Florida Statutes.

41 (3) Notwithstanding chapter 120, Florida Statutes, the
42 Department of Revenue may adopt rules to carry out this section.

43 Section 2. The sum of \$206,000 is appropriated from the
44 General Revenue Fund to the Department of Revenue for purposes
45 of administering section 1.

46 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. 29

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill:

Representative(s) offered the following:

Amendment (with directory and title amendments)

On line 43 delete \$206,000

and insert: \$210,540

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 CS Beverage Law
SPONSOR(S): Bogdanoff and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 144, SB 282, SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	18 Y, 0 N, w/CS	Morris	Liepshutz
2) Finance & Tax Committee		Rice <i>ACK</i>	Diez-Arguelles <i>[Signature]</i>
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

A recent U. S. Supreme Court ruling, *Granholm v. Heald*, struck down laws in Michigan and New York, similar to Florida law, allowing in-state wineries to make direct deliveries of wine to consumers, but prohibiting out-of-state wineries from making direct deliveries. The Court held that the laws in both states discriminated against interstate commerce to the benefit of in-state interests in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the Twenty-first Amendment. Subsequent to the *Granholm* decision, the U. S. District Court in Tampa ruled, in a pending Florida case *Bainbridge v. Turner*, that ss. 561.54(1) and (2) and 561.545(1), F.S., also discriminated against out-of-state wine producers to the advantage of in-state wine producers and were unconstitutional under *Granholm*.

In response to the *Granholm* and *Bainbridge* decisions, Florida began allowing out-of-state wine producers to make direct deliveries. A legislative response is needed to provide regulations and guidelines. This bill creates a direct shipper license and the regulatory mechanism for the direct shipment of wine by out-of-state or in-state wineries to Florida consumers for personal consumption.

The Revenue Estimating Conference has determined that the bill has a positive indeterminate impact on state revenues. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for an estimate of expenditures by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes — The bill creates a new winery shipper license fee in the amount of \$250.

Safeguard Individual Liberty — Both commercial and individual freedom are expanded by allowing out-of-state as well as in-state wineries to sell wine directly to Florida consumers without the current restrictions of the three-tier system of alcoholic beverage distribution. In addition, the bill proposes to cure the commerce clause violations cited in the *Granholm* decision by the U. S. Supreme Court.

Provide Limited Government—The bill creates a new license and regulatory system; the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation estimates the need for 23.5 FTEs and approximately \$1.3 million annually to implement and regulate the direct shipment of wine as provided in this legislation.

B. EFFECT OF PROPOSED CHANGES:

HISTORY OF ALCOHOL BEVERAGE REGULATION

Methods of controlling alcoholic beverage commerce have varied from complete inaction to absolute prohibition. Adopted in 1920, the 18th Amendment to the U. S. Constitution ushered in prohibition by forbidding the manufacture, sale, transportation, importation and exportation of beverage alcohol. The 21st Amendment to the U. S. Constitution, adopted in 1933, repealed prohibition. The 21st Amendment prohibits the transportation or importation into any state in violation of that state's laws and places the responsibility of controlling alcoholic beverage commerce upon the individual states for all activity within that state's borders.

The ability to engage in alcoholic beverage commerce is commonly viewed as a privilege subject to stringent safeguards. Alcoholic beverages are a highly taxed and highly regulated commodity at the state and federal levels.

Currently in the United States, most states operate under a "license" system. "License" states issue licenses to private individuals or businesses in all segments of alcoholic beverage commerce. The State of Florida operates under such a license system. Other states, however, maintain more direct control over the sale of alcoholic beverages by substituting the state for the private marketplace and are known as "control" states. Some states control only the wholesale level; others have retained control at retail through government-operated stores; and some control the sale of wine, as well as distilled spirits.

The Division of Alcoholic Beverages and Tobacco [division] in the Department of Business and Professional Regulation is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Among the division's statutory responsibilities is the authority for licensing businesses, conducting criminal and administrative investigations, conducting audits, inventories and tax assessments, seizing non-tax paid alcoholic beverages, and imposing penalties for violations. Licensees are held to a high standard of accountability.¹ The licensed premises of a Florida alcoholic beverage licensee are subject to random, unannounced inspection and a licensee can lose the ability to operate for violations of the Beverage Law or other state laws.

¹ Licensure requirements, qualification standards and prohibitions are set forth in ss. 561.15 and 561.17, F.S.

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer to wholesale distributor to retailer, with the retail vendor making the ultimate sale to the consumer.² Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax and by-the-drink tax are collected at the retail level. For FY 2004-05 the division collected \$575.9 million in state alcohol excise taxes - \$117.8 million of that amount was from wine products. While estimates specific to wine were not available, the Office of Economic and Demographic Research estimates that \$549.3 million was collected from the retail sale of all alcoholic beverages in the state. Alcoholic beverage wholesalers are audited twice each year. The excise tax rate on typical table wine is \$2.25 per gallon.³

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law.⁴ Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any vendor. Section 561.22, F.S., provides that no manufacturer, distributor or exporter may be licensed as a vendor [retailer]. This statute further provides that no vendor may also be licensed as a manufacturer, distributor or exporter. Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter.

Notwithstanding the overall premise, the Beverage Law contains a series of exceptions to the structured three-tiered distribution system. Included among those exceptions is authority for the licensure of wineries where the manufacturer of the beverage is also the wholesale distributor and the retail vendor of the product.

Section 561.221, F.S., authorizes the issuance of up to three vendor [retail] alcoholic beverage licenses for wine manufacturers in the state if the retail premises are situated on property contiguous to the manufacturing premises. Florida wineries may also be dually licensed as wholesale distributors. According to the division there are currently 41 licensed wineries in the state, ten of which have wholesale distributor licenses and 32 of which also have retail licenses. In addition, qualifying wineries may receive a designation as a Certified Florida Farm Winery. To qualify as a Certified Florida Farm Winery, a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;
- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of \$100.

To facilitate growth in Florida's viticulture industry the Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways.

HISTORY OF DIRECT SALES

In recent years there has been an expansion of solicitations and advertisements for alcoholic beverage sales, particularly wine, via magazines, specialty catalogues, direct mailings and, more recently, the Internet.⁵ In addition, there has been increased interest on the part of consumers to more easily obtain their specific wines of choice. Sales of this nature most often bypassed the state's regulatory and tax collection procedures. During this same time period, consumers and wine industry

² See s. 561.14, F.S. for license and registration classifications

³ Section 564.06, F.S., establishes a staggered taxation rate on wine based upon the percent of alcohol by volume. Typical table wine containing 0.5 percent or more alcohol by volume but less than 17.259 percent alcohol by volume is taxed at a rate of \$2.25 per gallon.

⁴ In the beverage alcohol industry, licensed premises are often called "houses." It was perceived to be an *evil* for houses of the retail tier to be tied to houses at the wholesaler or manufacturing tier – hence, *Tied House Evil*. This group of laws is designed to prevent manufacturers or wholesalers from owning or controlling retail outlets where their product may be sold to the exclusion of other products and where, during pre-prohibition years, an abundance of social ills existed.

⁵ Federal law, 18 USC 1716 (f), prohibits mailing any alcoholic beverage through the U. S. Postal Service.

interests have sought the ability to legally ship wine into the various states through reciprocity laws or laws allowing for limited direct shipping.

In the early 1990's the Division of Alcoholic Beverages and Tobacco issued numerous requests to out-of-state shippers to discontinue the practice of selling and shipping alcoholic beverages, primarily wine, directly to Florida consumers in violation of state law. The division, however, lacked legal jurisdiction to require compliance on two fronts: 1) since the out-of-state shippers did not maintain a physical presence in the State of Florida there was no nexus to bring them under Florida jurisdiction; and 2) federal law did not provide a remedy by which the state could receive injunctive relief in federal courts.⁶ This scenario appeared to leave Florida regulators without a means to require out-of-state shippers to comply with Florida's regulatory and taxation requirements.

The Legislature, in 1997, found that the direct shipment of alcoholic beverages was a danger to the public health, safety, and welfare; to state revenue collections; and to the economy of the state. The 1997 Legislature enacted Chapter 97-213, Laws of Florida, which increased the penalty from a misdemeanor to a 3rd degree felony for knowingly and intentionally shipping alcoholic beverages from an out-of-state location directly to a Florida consumer in violation of the Beverage Law. Some argued that this penalty increase would act as a deterrent to direct shipping since a wine manufacturer would not risk losing their federal permit by being charged with a felony.⁷ Others argued that the penalty and the underlying regulatory structure were antiquated, anticompetitive, and a violation of free trade between the states.

Florida's direct shipping statute was subsequently challenged in *Bainbridge v. Turner*.⁸ During this same period, similar challenges were taking place in other states, including Michigan and New York, with mixed results.

DIRECT SHIPPING LITIGATION

Granholm v. Heald

Similar to Florida's law, the State of Michigan banned out-of-state wineries from shipping wine directly to consumers but allowed in-state wineries to do so. The State of New York allowed direct shipments to residents but only if the out-of-state shipper obtained a license and a condition of obtaining that license was a physical presence in the state. Both laws were challenged and Michigan's law was held invalid while the New York law was upheld. Appeals from these two cases were ultimately consolidated into a single case before the U. S. Supreme Court, *Granholm v. Heald*.⁹ In its decision, the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted, non-discriminatory trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The question before the Supreme Court was: *Does a state regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Section 2 of the Twenty-first Amendment?*

Section 2 of the 21st Amendment to the U. S. Constitution reads: *The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.*

⁶ See *Department of Business and Professional Regulation v. Sam's Wines and Liquors*, No. 96-3602, (Fla. 2nd Cir. Ct., September 3, 1997), *affirmed* 731 So.2d 655 (Fla. 1st DCA 1999) and *Florida DBR v. Zachy's*, 125 F.3d 1399 (11th Cir. 1997)

⁷ The Federal Alcohol Administration Act, 27 U.S.C. s. 203, requires a basic permit in order to engage in the business of importing into the United States distilled spirits, wine, or malt beverages, to engage in the business of distilling spirits or producing wine, and for wine, spirits and beer wholesalers. Retailers and beer manufacturers are not required to obtain a federal basic permit.

⁸ *Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM; Originally *Bainbridge v. Martelli*, 148 F.Supp.2d 1306 (M.D. Fla. 2001)

⁹ *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005)

The U. S. Supreme Court struck down both the Michigan and New York laws. The Court held that the laws in both states discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the 21st Amendment.

The Court ruled that either all sales of wine must be through face-to-face transactions or a permit system must be developed to allow for wine deliveries from out-of-state which did not discriminate against out-of-state interests to the benefit of in-state interests. The Court stated that tax collection and other regulatory objectives -- facilitating orderly market conditions, ensuring regulatory accountability, protecting the public health and safety -- could be achieved through a permit system. States may not require residency of wine producers in order to compete on equal terms with in-state businesses, nor may states require reciprocal shipping privileges for wine producers from other states. The Court's decision addresses only wine producers. The Court specifically distinguished other products and the opinion does not directly open the door for out-of-state retailers to ship direct. The Court made a clear distinction between laws regarding direct sales by wine producers as distinguished from the state's regulation within its borders of the resale of alcohol beverages.

The Court did not specifically address the issue of personal jurisdiction for purposes of enforcement but referenced the authority of the states' attorneys general to seek injunctive relief in federal court under the 21st Amendment Enforcement Act and a winery's potential loss of its federal basic permit as incentive to comply with a state's alcoholic beverage statutes. [See also **Federal Law** comments.]

The traditional three tier system of alcohol beverage distribution utilized by Florida and many other states was held to be legitimate as long as state laws satisfy the key holdings of *Granholm*.

Bainbridge v. Turner

At a status conference held by the court on May 25, 2005, the State conceded that based upon the *Granholm* decision the two statutes in question in *Bainbridge v. Turner*,¹⁰ ss. 561.54(1)-(2) and 561.545(1), F.S., were unconstitutional.

Subsequently, an August 5, 2005 Order issued by U. S. District Court Judge James Whittemore in Tampa found the two statutes in question in *Bainbridge* violated the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

"Florida's direct shipment scheme, codified in ss. 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit *out-of-state vendors and producers* from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*." [Emphasis supplied]

While the Order enjoined the State from enforcing the two statutes in question, it is unclear whether direct wine shipments are allowed under the statutory scheme remaining in place. Further, it remains unclear whether this injunction is limited to out-of-state wineries or permits direct shipments by out-of-state wineries and *other shippers* that are not wineries. The Order did not address the constitutionality of these statutes with regard to other alcoholic beverages such as beer and spirits. A legislative response to *Granholm* and *Bainbridge* is required to clarify Florida law.

FEDERAL LAW

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. s. 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling spirits or producing wine. According to the Bureau of Alcohol and Tobacco Tax and Trade in the Department of the Treasury [TTB] there are currently 4,390 wine premises with federal basic producer permits. A basic permit is also required for spirits, wine and malt beverage wholesalers. Retailers are not required to obtain basic permits under the FAA Act.

A basic permit may not be issued to a person that has, within 5 years prior to the date of making application, been convicted of a state or federal felony, or has, within 3 years of making application, been convicted of a federal misdemeanor relating to liquor. The TTB indicates that at the present time fingerprint-based background checks are not conducted, rather the Bureau conducts a background investigation based on the name, date-of-birth and social security number of the applicant. The FAA Act provides that basic permits are conditioned upon, among other things, compliance with the 21st Amendment and other Federal laws relating to its enforcement and may be suspended or revoked for certain violations.¹¹ There is no fee for a basic permit.

There is no distinction based on the size of a winery for licensing purposes. For tax purposes, however, federal law treats domestic wineries producing less than 250,000 gallons of wine annually differently than those producing more than 250,000 gallons. Federal law allows incremental tax credits for those smaller domestic wineries producing between 100,000 and 250,000 gallons of wine annually.¹²

Generally, wine producers are required to post a bond as surety for the payment of taxes in amounts ranging from \$1,000 to \$100,000 depending upon expected tax liability. Smaller wine producers are allowed to defer tax payments for as long as one year and may post a second type of bond called deferral coverage. A deferred coverage bond must be sufficient to cover the outstanding tax for the deferral period but may not be less than \$500 or more than \$250,000.¹³

The Bureau of Alcohol, Tobacco, and Firearms [now Bureau of Alcohol and Tobacco Tax and Trade] in ATF Ruling 2000-1 ruled that the Bureau could, under appropriate circumstances, take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State.

“ATF will intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. However, while ATF is vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the FAA Act, the extent of this authority does not extend to situations where *an out-of-State retailer* is making the shipment into the State of the consumer.” [Emphasis supplied.]

Preliminary reports from TTB did not identify any instance where the federal government has taken action in this manner against a federal basic permit as a result of an unlawful shipment of alcoholic beverages.

The Twenty-first Amendment Enforcement Act, 27 U.S.C. s. 122a, provides the federal district courts with subject matter jurisdiction over any action brought by a state attorney general against a person who is engaged in, or has engaged in, the illegal transportation of alcoholic beverages into a state. The act prohibits the direct shipment of wine into a state in violation of state laws and authorizes state

¹¹Title 27, ch.8, subchapter I, s.204(c)

¹² 27 CFR 24.278

¹³ 27 CFR 24.145-.159

attorneys general the power to sue wineries in federal court to enjoin violations of state law. Staff has been unable to determine whether a state attorney general has utilized this law.¹⁴

Recent Changes in Florida Law

In response to the *Granholm* and *Bainbridge* decisions, the Division of Alcoholic Beverages and Tobacco began allowing out of state direct shipments of wine in February 2006.

The division provided information on its web site informing wineries that there are five dry counties in Florida and that Florida prohibits sales of alcoholic beverages to persons under the age of 21. The division also informed wineries that excise taxes must be paid with instructions on how. In addition the division provided information regarding the applicability of the use tax to Florida consumers who purchase items from an out of state seller.

EFFECT OF PROPOSED CHANGES

The bill creates s. 561.585, F.S. to provide the license and regulatory mechanism for the direct shipment of wine into Florida for personal consumption. Among its provisions the bill specifies the qualifications for a winery shipper license, provides for labeling of packages and signature of recipient, provides for monthly reports, and requires payment of taxes.

Amendments to Direct Shipping Prohibition Statutes

Sections 561.54 and 561.545, F.S., were the two statutory provisions ruled unconstitutional in *Bainbridge*; this bill amends both sections.

Existing s. 561.54, F.S. prohibits the delivery of an alcoholic beverage from without the state into the state except to qualified licensees. This bill creates a new subsection (3) in s. 561.54, F.S., to provide an exception to the direct shipping prohibition and allow the shipment of wine by a winery shipper licensee and delivery by a common carrier in accordance with newly created s. 561.585, F.S.

Section 561.54, F.S., grants standing for a licensee aggrieved by a violation of the direct shipping prohibition statute in any court of jurisdiction to recover money for the state and to seek injunctive relief. The bill removes the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof.

Both the *Granholm* and *Bainbridge* decisions addressed inequities with regard to direct shipments of wine. This bill amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor.

Section 561.22, F.S., prohibits a manufacturer, distributor, or exporter from being licensed as a retail vendor. [Retail vendors are authorized to make deliveries of any alcoholic beverage sold on its licensed premises and telephone and mail orders are considered as sales actually made on the licensed premises.] Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter. That statute also prohibits the renewal of a dual license but contains an exception to this structured three-tiered distribution system for certain qualifying wineries, including Certified Florida Farm Wineries. The ability of in-state licensees to avail themselves of the benefits of these exceptions in the Beverage Law was central to the *Bainbridge* decision which stated:

Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are

¹⁴ Empirical information gathered from conversations with TTB personnel and with industry representatives; see also *Interim Project Summary 2006-146*, Committee on Regulated Industries, the Florida Senate, October 2005.

not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.

This bill amends s. 561.24, F.S., to grandfather in any winery that holds a license as a distributor on July 1, 2006, while prohibiting any wine manufacturer from obtaining a wholesale distributor license in the future.

Winery Shipper License

The bill creates a "winery shipper license" and authorizes winery shipper licensees to ship wine directly to Florida consumers for their personal use only and not for resale. To qualify for a winery shipper license the applicant must:

- obtain and maintain licensure as a primary American source of supply;
- provide the division with a copy of its current wine manufacturer's license issued by this or another state;
- provide the division with a copy of its current federal basic permit as a wine producer;
- manufacture less than 250,000 gallons of wine per year;
- pay a \$250 license fee; and
- file a \$5,000 surety bond with the division.

The present annual license fee for a wine manufacturer in Florida is \$1,000 [\$2,000 if manufacturing wines and cordials]; the annual license fee for a wine distributor in Florida is \$1,250; and the annual licensee fee for a retail vendor of wine is based on county population ranging from \$60 to \$280.

This bill does not require an in-state licensee to relinquish any existing beverage license but provides an option for licensure as a winery shipper. Licensees presently holding dual licenses are grandfathered and may continue to ship wine directly to Florida consumers. In addition, winery shipper licensees may continue to use the state's licensed distribution network while also shipping direct to the consumer under the authority of the newly created winery shipper license; one means does not preclude the other.

Since applicants for a winery shipper license are required to submit copies of their current federal basic permit and state wine manufacturer license, they are not required to meet the licensure requirements and qualification standards set out in ss. 561.15 and 561.17, F.S.; instead, the bill relies on the applicant having met appropriate licensing qualification criteria established in other states and by the federal government.

A winery shipper license may not be issued or renewed if the applicant or licensee is owned by a winery that manufactures more than 250,000 gallons of wine annually. Therefore, if a winery producing less than 250,000 annually is owned by a winery that produces more than 250,000 annually, the smaller winery could not qualify for a winery shipper license. Production statistics are not readily available as many wineries are privately held and their production information is considered proprietary information; therefore, it is not possible to ascertain the actual number of wineries that could qualify, or be disqualified, for licensure based on production levels. While the percentage is not verifiable, various interests contend that over 90% of wineries nationwide produce less than 250,000 gallons of wine annually.

Winery shipper licensees may not ship more than 42 gallons of wine per calendar year to a single Florida address and Florida consumers are prohibited from purchasing more than 42 gallons of wine per calendar year per address.

Primary American Source of Supply

For purposes of tax revenue control s. 564.045, F.S. requires the registration of each brand of wine sold in Florida and the licensure of that brand's "primary American source of supply" [PAS]. There is only one PAS for each brand and each brand must have a licensed PAS. Generally, the PAS is either the wine manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured. In the case of foreign-produced wine it is often an importer. Licensure as a PAS authorizes the shipment of wine manufactured within and without the state to licensed distributors, importers, manufacturers, bonded warehouses, and registered exporters within the state.

This bill requires, as a condition of licensure, that the winery shipper licensee obtain and maintain a current license as a primary American source of supply.

Record Retention and Reporting Requirements

The Beverage Law requires manufacturers, distributors, sales agents, importers, and exporters to maintain records and make monthly reports to the division of all beverages manufactured, imported, exported, and sold within the state. Reports must be made by the 10th day of each month and records must be maintained for a period of three years.

This bill requires winery shipper licensees to report monthly to the division whether any wine was shipped into or within the state during the previous month, the total amount of wine shipped into or within the state for the preceding month, the quantity and types of wine shipped, and the amount of excise tax paid to the division for the wine shipped during the previous month. To avoid duplicate filings, this report is not required from a winery shipper licensee that files a monthly report pursuant to s. 561.55, F.S., that contains all the required information.

Section 562.20, F.S., requires common carriers to file monthly reports of alcoholic beverages deliveries into or within the state with the division. This bill exempts common carriers making deliveries of alcoholic beverages from this required report filing.

Audit, Bond and Tax Requirements

Present law requires alcoholic beverage excise taxes to be paid by the 10th day of each month, and licensed wholesalers and manufacturers are audited twice each year for compliance. In addition, alcoholic beverage wholesalers and manufacturers are required to file a surety bond with the division to ensure the payment of all taxes. The surety bond for a winery is \$5,000 and for a wine distributor is \$25,000. [See ss. 561.37, 561.41, 561.50, 561.55, F.S.]

This bill requires winery shipper licensees to pay the appropriate excise tax to the division and the appropriate sales tax to the Department of Revenue monthly. To establish that the transfer of title takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if each sale takes place at the location where the delivery occurs in Florida. (Please see FISCAL COMMENTS section for further tax implication discussion.) Records of the direct shipments, including the names, addresses, amounts, and dates of all shipments to persons in this state must be maintained for a period of three years and are subject to audit by the Division of Alcoholic Beverages and Tobacco or the Department of Revenue upon request. The cost of performing an audit is assigned to the agency requesting the audit unless the licensee is found to be in material violation of the direct shipping statute in which case the cost of the audit is assigned to the licensee. No audit schedule is provided in the bill.

Winery shipper licensees are required to post a \$5,000 surety bond as surety for the payment of all taxes. The Division is authorized to accept a bond of a lesser amount if it is determined that the amount

of taxable sales is such that a lower bond would be adequate; however, the bond may not be reduced below \$1,000. If a winery already has a surety bond on file with the division pursuant to s. 561.37, F.S., or for another license in an amount in excess of \$5,000, it is deemed to satisfy this requirement.

Age Verification

The Beverage Law makes it unlawful for any person to sell, give, serve, or permit to be served any alcoholic beverage to a person less than 21 years of age. A violation of this prohibition constitutes a 2nd degree misdemeanor. In addition, a retail vendor's alcoholic beverage license is subject to suspension or revocation for unlawful sales to persons under the age of 21 by the licensee or an employee of the licensee. The Beverage Law does not specifically require a vendor to verify age through identification checks prior to the sale of an alcoholic beverage but provides a complete defense to an unlawful sale if: 1) the person falsely evidenced that he or she was of legal age to purchase or consume the beverage; 2) the appearance of the person was such that an ordinarily prudent person would believe him or her to be of lawful age; and 3) the licensee or employee checked one of the approved forms of identification. For these purposes approved forms of identification include: a driver's license, an identification card issued by this state or another state, a passport, or a United States Uniformed Services identification card. [See s. 562.11, F.S.]

This bill, in newly created s. 561.585(3), F.S., mandates that the winery shipper licensee and common carrier must require that the signature of the recipient is obtained prior to delivery and after presentation of valid identification showing the recipient is 21 years of age or older. Acceptable forms of identification are the same as specified in s. 562.11, F.S. A winery shipper licensee or common carrier that allows a person under the age of 21 to accept delivery of an alcoholic beverage is provided with a complete defense against any civil action, except for administrative action by the division, if the licensee or common carrier complied with the specified age verification procedures.

The bill provides that a winery shipper licensee that knowingly and intentionally ships wine to a person in Florida under the age of 21 commits a 3rd degree felony. Likewise, a common carrier, permit carrier, or other commercial conveyance that knowingly and intentionally delivers wine to a person in Florida under the age of 21 commits a 3rd degree felony. A person who knowingly and intentionally obtains wine in violation of newly created s. 561.585, F.S., commits a 2nd degree misdemeanor.

Package Labeling Requirements

The bill establishes labeling requirements for wine shipments but allows flexibility for common carriers to use their individual labeling criteria. The winery shipper and common carrier must ensure that the outside shipping label on each package is conspicuous and includes the following components, without specifying the format:

- that the package contains alcohol;
- that an adult signature is required; and
- that the recipient must be at least 21 years of age.

Alcoholic Beverage Deliveries by In-state Licensees

The Beverage Law allows retail vendors, or persons acting on their behalf, to make deliveries away from their place of business of alcoholic beverage sales actually made at the business location, s. 561.57, F.S. The law does not specifically require the licensee or an agent of the licensee making an off-premises delivery of an alcoholic beverage to check identification in order to verify the recipient is at least 21 years of age but treats such sales and deliveries the same as an on-premises sale. An off-premises delivery of an alcoholic beverage to a person under the age of 21 is a violation of s. 562.11, F.S., and subject to the same penalty. In addition, the retail vendor is subject to administrative penalties under the Beverage Law, including license revocation.

This bill amends s. 561.57(6), F.S., to require all licensees, common carriers or other person acting as an agent for delivery in this manner to verify that the person receiving the alcoholic beverage is at least 21 years of age and requires the division to adopt rules. The bill specifies that adherence to these age verification procedures provides the common carrier and the licensee or other person hiring the common carrier with a complete defense of selling, giving or serving alcoholic beverages to any person under the age of 21. This same standard applies to individuals using a common carrier to make a delivery of an alcoholic beverage, e.g. a gift delivery.

Section 561.57(1), F.S., specifies that telephone and mail orders received at a licensed business are construed as sales actually made on the licensed premises. This bill amends that subsection to construe Internet orders, in addition to telephone and mail orders, as a sale actually made at the vendor's licensed place of business.

Penalties

Section 561.585(7), F.S., provides that in addition to the penalties provided by in the Beverage Law, the division may suspend or revoke a winery shipper's license or impose a fine in an amount up to \$2,500 per violation of s. 561.585, F.S. In addition, this subsection provides that any person that *knowingly and intentionally* obtains wine from a winery shipper licensee in violation of s. 561.585, F.S., commits a misdemeanor of the second degree.

The bill provides that any winery shipper licensee, or any common carrier, permit carrier or other commercial conveyance that *knowingly and intentionally* ships or delivers wine directly to any person in this state who is under 21 years of age commits a felony of the 3rd degree.

The bill changes the applicability of existing s. 561.545, F.S., from all alcoholic beverages to only beer and spirits. As amended, the bill makes it a violation for a business selling beer or spirits, a common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance to knowingly and intentionally transport beer or spirits from an out-of-state location directly to a Florida consumer. Any business selling beer or spirits who violates this prohibition within two years after receiving a cease and desist order, or within two years after a prior conviction, commits a 3rd degree felony. Any common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance who violates this prohibition due to a second or subsequent delivery from the same source and location within a 2-year period after the first delivery shall be issued a notice to show cause why a cease and desist order should not be issued. Any subsequent violation within two years after receiving the cease and desist order or within two years of a prior conviction is a 3rd degree felony.

Jurisdiction

The bill creates a new s. 561.585(5), F.S., which specifies that by obtaining a direct shipper license the licensee is deemed to have consented to the jurisdiction of the division and to any other state agency and the courts of this state concerning enforcement. To establish that the transfer of title for the product takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if the sale took place at the location where the delivery occurred in Florida.

Florida Farm Wineries

Section 599.004, F.S., establishes the criteria necessary to be designated as a certified Florida Farm Winery. The Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction, and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways. To qualify as a certified Florida Farm Winery a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;

- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of \$100.

Some wineries in Florida import grape juices and other products from other states or nations and use those products to produce wine. To encourage the use of Florida agricultural products this bill amends the criteria for designation as a certified Florida Farm Winery to require that at least 60 percent of wine produced at the winery be made from Florida agricultural products. The Commissioner of Agriculture is authorized to waive this production requirement in times of hardship.

Other

Please see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT portion of the bill analysis for estimates of fiscal impact.

The bill contains a severability clause and rulemaking authority for the division and the Department of Revenue and will take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates s. 561.585, F.S., creating a winery shipper license that authorizes the direct shipment of wine for personal consumption; establishes qualifications and restrictions; imposes labeling requirements; provides signature requirements; requires monthly reports; requires payment of sales and excise taxes; authorizes audits; provides jurisdiction; and establishes penalties.

Section 2. Amends s. 561.54(2), F.S., to remove the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof; creates s. 561.54(3), F.S., exempting shipments of wine by a licensed winery shipper from the direct shipping prohibitions.

Section 3. Amends s. 561.545, F.S., authorizing the direct shipment of wine to individuals by licensed winery shippers and exempting those shipments from the direct shipping prohibitions and penalties in s. 561.545; maintains direct shipping prohibition for beer and liquor.

Section 4. Amends s. 561.57, F.S., to construe Internet orders as taking place on a Florida vendor's licensed premises; exempting common carriers from certain reporting requirements; providing for age verification procedures; and providing a defense for common carriers and licensees for certain unlawful sales.

Section 5. Amends s. 599.004, F.S., to add a new criteria for qualification as a certified Florida Farm Winery.

Section 6. Amends s. 561.24(5), F.S., to remove the authority for renewal of distributor licenses held by a wine manufacturers and grandfathers in existing licensees.

Section 7. Provides for severability.

Section 8. Provides for rulemaking by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation and the Department of Revenue.

Section 9. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Licensing Fees

The State of Florida will receive a \$250 licensing fee for every winery shipper licensee who wishes to ship wine directly to consumers in Florida. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in license fee revenue annually to the Alcoholic Beverage and Tobacco Trust Fund.

Sales and Excise Taxes

Licensed winery shippers are required to pay excise taxes on and to collect and remit sales for all wines shipped directly to individuals in this state. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in sales and excise tax collections.

	<u>2006-07</u>	<u>2007-08</u>
General Revenue	Indeterminate	Indeterminate
Alcoholic Beverage and Tobacco TF	<u>Indeterminate</u>	<u>Indeterminate</u>
Total	Indeterminate	Indeterminate

2. Expenditures:

Assuming each of the current 1,098 Primary American Source of Supply licensees receive a winery shipper license, the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation estimates the need for a total of 23.5 additional positions to implement and regulate the direct shipment of wines into the state.

Licensing

Based on the assumption that there would be an estimated 1,098 winery shipper licenses to be processed each year, the division estimates that the increase in workload will require one half-time Regulatory Specialist II position. This position will license the winery shippers and microfilm all of the corresponding licensing records. The Division contends it will be necessary to keep this permanent position in order to maintain the continual licensing and registering processes.

Auditing

A total of 13,176 reports would be received annually if each of the estimated 1,098 winery shipper licensees report each month as required by the legislation. Assuming it will take 30 minutes to process each report, and using 1,854 available work hours per employee, the Division estimates that the Bureau of Auditing will need 4 additional Revenue Specialist positions in addition to current staff for monthly report processing.

The frequency of audits is not determined by the bill. In-state manufacturers and distributors are currently audited semi-annually by the division. Although this audit frequency may not be practical for the out-of-state entities, by auditing the estimated 1,098 licensed direct shippers semi-annually, and assuming a minimum of 16 hours to perform each audit, the Division estimates that the Bureau of Auditing would need 9 additional Tax Auditor positions. In addition, the Division estimates annual travel expenses of \$12,000 per auditor, which would encompass one trip per month, per auditor.

Enforcement:

The division estimates that the enforcement program will require four new law enforcement positions to be stationed throughout the state and two new Administrative Assistant positions. The law enforcement positions will be required to investigate violations and prepare criminal court prosecutions for tax compliance, non-payment of fees, and sales of alcohol to minors.

Information Technology:

The division estimates that there will be a need for extensive computer programming for the direct shipment program. This includes a licensing program to incorporate the licensing of the winery shipper licensees, a records maintenance system to incorporate the additional records that must be maintained for the new licensees, and audit programs to verify the accuracy of the reported shipments and tax payments. The Division estimates the need for one Systems Programming Administrator to develop and maintain these programs.

Office of the General Counsel:

The division estimates the need for one additional senior attorney position, and associated travel expenses, to assist the division in the implementation and enforcement of the program.

Service Operations:

The new license requires an annual renewal, which will create a workload increase in the Central Intake Unit. Annual renewals increase the revenue activity and renewal of license records and support of these license records is performed throughout the life of the record. The Division estimates the need for two Regulatory Specialist II positions to process annual renewals for a conservative base of 1,000 records. In addition, these positions will perform data entry needed to maintain license records, including name, address and renewal changes.

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Non-Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Operating Capital Outlay	45,050	0	0
Other Personal Services	0	0	0
Other Expenses	77,457	0	0
Subtotal	122,507	0	0

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Salaries/Benefits 23.5 FTE's	1,065,131	1,103,476	1,131,063
Expenses	262,055	262,055	262,055
Other DMS/Hr Svc.	9,236	9,568	9,807
Subtotal	1,336,421	1,375,099	1,402,925

Non-Operating Expenditures	FY 2006-07	FY 2007-08	FY 2008-09
Service Charges (to General Revenue)	9,896	10,503	11,476
Other Indirect Costs	0	0	0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Federal Trade Commission bans on interstate direct shipping of wine represent the single largest regulatory barrier to expanded e-commerce of wine.¹⁵ Many wine producers reportedly rely on the Internet to market their product and implementation of this legislation would support the increased viability of these businesses.

¹⁵ Possible Anticompetitive Barriers to E-Commerce: Wine, Federal Trade Commission, July 2003 @ page 3. Report available at <http://www.ftc.gov/os/2003/07/winereport2.pdf>

It is unknown to what extent the availability of direct-to-consumer purchases of wine will decrease sales made at licensed Florida retail locations and from licensed wholesalers.

D. FISCAL COMMENTS:

The bill provides that each direct shipper of wine, as provided in s. 561.585(6), F.S., is deemed to have consented to the jurisdiction of any state agency. As such, every dealer who is licensed as a direct shipper of wine has consented to the requirements of ch. 212, F.S. related to sales and use tax.

Tax Payment and Remittance

Section 212.07(2), F.S., requires the sales tax levied on retail sales to be collected by the dealers from the purchaser or consumer. The amount of the tax is to be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale. Section 212.07(4), F.S., prohibits a dealer from advertising or holding out to the public that he or she will absorb all or any part of the tax or that the tax will not be added to the selling price of the property. Under these provisions, a direct shipper of wine would be required to collect sales tax from the purchaser on its sales of wine and to separately state Florida sales tax on its sales slip, invoice, or other tangible evidence of sale to the purchaser, and would be prohibited from "paying" sales tax due on the sale of wine to its Florida customers.

Under the proposed provisions of s. 561.585(5), F.S., direct shippers of wine would be required to "pay" monthly to the Department of Revenue all sales tax on sales to persons in Florida for the preceding month. These provisions are not consistent with the provisions of s. 212.07, F.S. To better reflect the intended purpose, the word "pay" should be replaced with "collect and remit".

Discretionary Surtax

Section 212.054(3)(a), F.S., requires the collection of applicable discretionary surtaxes on the sale of wine when that wine is delivered within a surtax county. This section is only applicable to dealers with a physical presence in Florida. Businesses located outside of Florida are subject to s. 212.0596, F.S. This section requires every out of state dealer located in or under the jurisdiction of the United States that is engaged in the business of making mail order sales to collect sales tax on sales of tangible personal property. Such dealers are only required to collect discretionary sales surtax at the rate imposed by the surtax county where the taxable item of tangible personal property is delivered when:

- The mail order is placed through a dealer's location within a surtax county;
- Received by the dealer in another state; **and**
- The item is delivered to a location within a surtax county.

These provisions imply an exemption from discretionary surtax for out of state dealers.

Under the proposed provisions of s. 561.585(5), F.S., the amount of sales tax is calculated as if the sale took place at the location where the delivery occurred in Florida. It is unclear if it is the intent of the bill that all sales of wine delivered in a county imposing a discretionary sales surtax be subject to the surtax. While this provision is consistent with the provisions of s. 212.054(3)(a), F.S., regarding the collection of the surtax when taxable items are delivered within a surtax county, it would not be consistent with the treatment afforded a direct shipper of wine who has no Florida location and is making mail order sales pursuant to s. 212.0596, F.S. Out of state shippers are currently not required to collect discretionary sales surtax. In addition, there is no provision for the distribution of proceeds of discretionary sales surtax collected by dealers of mail order sales who have no physical location in Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The Wine Institute, a California-based industry association, contends that the 250,000 gallon qualification ceiling amounts to discrimination based on size, rather than geographic location as was the case in *Granholm*, and may be subject to a constitutional challenge. Others contend that the 250,000 ceiling captures over 90% of wine producers nationwide and treats similarly situated wine producers equally.

The bill provides that on becoming licensed as a winery shipper the licensee is deemed to have consented to the jurisdiction of the division or any other state agency and the courts of this state. The bill further requires the payment of excise and sales taxes on all wine delivered to Florida consumers and specifies those taxes are to be calculated as if the sale took place at the location where the delivery occurred in Florida. Opinions may vary on whether the consent to personal jurisdiction and title transfer provisions in this legislation accomplish their intended purposes.

B. RULE-MAKING AUTHORITY:

The division is required by rule to prescribe the age verification process of common carriers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under the proposed provisions of s. 561.585(5), F.S., direct shippers of wine would be required to "pay" monthly to the Department of Revenue all sales tax on sales to persons in Florida for the preceding month. These provisions are not consistent with the provisions of s. 212.07, F.S. To better reflect the intended purpose, the word "pay" should be replaced with "collect and remit".

Section 561.585(7), F.S., provides that any "common carrier, permit carrier, or other commercial conveyance" that knowingly and intentionally delivers wine directly to a person who is under 21 commits a 3rd degree felony. The term "other commercial conveyance" is not used elsewhere in the bill when referring to the universe of potential means of commercial transportation.

The Department of Revenue has recommended an effective date of January 1, 2007 to ensure sufficient time to adequately implement the provisions of the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The sponsor of this bill offered a strike-all amendment which was adopted by the Business Regulation Committee on February 7, 2006.

This strike-all amendment creates a new s. 561.585, F.S., and the license and regulatory mechanism which allows the direct shipment of wine to any person that is at least 21 years of age for personal consumption; the amendment deletes the provision contained in the original bill allowing for direct shipments to vendors.

A "winery shipper" license may only be obtained by a wine manufacturer. The bill removes the authority for a Florida wine manufacturer to also be licensed as a distributor but grandfathers existing licensees and

retains authority for certain wine manufacturers to hold retail licenses. To obtain a winery shipper license a winery applicant must:

- obtain and maintain licensure as a primary American source of supply;
- provide the division with a copy of its current wine manufacturer's license issued by this or another state; [limits to wine manufacturers, not all alcoholic beverage licensees as in original bill]
- provide the division with a copy of its current Federal basic permit as a wine producer; [new requirement]
- manufacture less than 250,000 gallons of wine per year; [new requirement]
- pay a \$250 license fee; [increased from \$100 fee]
- file a \$5,000 surety bond with the division. [new requirement]

The bill provides that a winery shipper license may not be issued to an applicant that is owned by a winery that produces more than 250,000 gallons of wine annually. According to industry estimates over 90 percent of wineries nationwide produce less than 250,000 gallons of wine annually. Winery shippers are prohibited from shipping more than 42 gallons of wine per year to a single address and recipients are prohibited from ordering more than 42 gallons of wine per year per address.

The criteria to become certified as a Florida Farm Winery was amended to require that at least 60 percent of all wine produced by the farm winery be made from Florida agricultural products. The bill allows the Commissioner of Agriculture to waive this requirement in times of hardship.

The strike-all amendment establishes additional labeling requirements for wine shipments. The winery shipper must ensure that the outside shipping label on each package is conspicuous and includes the following components, without specifying the format:

- that the package contains alcohol;
- that an adult signature is required; and
- that the recipient must be at least 21 years of age.

Responsibility is placed on both the winery shipper and the common carrier to ensure that the signature of a person that is at least 21 years of age is obtained prior to delivery of the direct-shipped wine. The approved forms of identification are expanded to include an identification card issued under s. 322.051 or, if the person is physically handicapped as defined in s. 553.45(1).

The amendment clarifies administrative penalty provisions and allows for the suspension or revocation of a winery shipper license or the imposition of a fine in an amount up to \$2,500 per violation of newly created s. 561.585. Other penalty provisions in the strike-all amendment remain the same as in the original bill, except that the amendment increases the evidentiary standard for a person that obtains wine from a winery shipper in violation of the statute to knowingly and intentionally, which is the same standard applicable to a winery shipper or a common carrier.

The amendment provides the winery shipper and the common carrier with a complete defense to civil actions for the sale or delivery of alcoholic beverages to a person under the age of 21 if the prescribed age verification procedures were followed.

The amendment expands the monthly reporting requirements for winery shippers to provide greater specificity with regard to the wines shipped into the state and taxes paid. The amendment also exempts those licensees that already make monthly reports pursuant to s. 561.55, F.S., from duplicate reporting requirements if all relevant information is captured in other required reports.

The requirement for payment of excise and sales taxes remain in the strike-all amendment. Sales taxes are calculated as if the sale took place at the location where the delivery occurs in the state. A new provision is included to specify that the cost of performing an audit shall be assigned to the agency requesting the audit

unless the licensee is found to be in material violation, at which time the cost of the audit will be assigned to the licensee.

The strike-all further amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor. In-state retailers retain their ability to make direct deliveries of any type of alcoholic beverage.

The strike-all construes Internet orders as telephone orders made at a vendor's place of business and allows vendor delivery of same.

The strike-all amendment contains a severability clause and rulemaking authority for the division and the Department of Revenue.

Please see bill analysis for complete description of legislation.

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CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Beverage Law; creating s. 561.585, F.S.; authorizing certain direct shipments of wine; requiring licensure of winery shippers; providing requirements for licensure; providing prohibitions; requiring that a winery shipper licensee file a surety bond with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; requiring that each container of wine shipped directly be labeled with a notice; requiring monthly reports by winery shipper licensees; providing limitations on the amount of wine a winery shipper may ship or cause to be shipped; providing age requirements for those receiving direct shipments of wine; providing a defense to certain actions; requiring payment of taxes by direct shippers; requiring that winery shippers maintain certain records for a certain time period; providing for jurisdiction; providing penalties; amending s. 561.54, F.S.; removing a provision requiring that the licensee be aggrieved by a violation

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involving prohibited delivery from without the state to have standing to bring an action; exempting from such prohibition shipment of wine by a winery shipper licensee; amending s. 561.545, F.S.; revising provisions relating to prohibition against direct shipment of alcoholic beverages to limit applicability to malt or spirituous beverages; exempting applicability of such prohibition to the shipment of wine by a winery shipper licensee; amending s. 561.57, F.S.; providing that Internet orders shall be construed as telephone orders; exempting common carriers, licensees, or other persons utilizing common carriers as their agents from certain report filing requirements; requiring common carriers to verify the age of persons receiving shipments; providing a defense to certain actions; amending s. 599.004, F.S.; revising qualifications for the certification of Florida Farm Wineries; amending s. 561.24, F.S.; revising an effective date; authorizing certain manufacturers of wine holding a distributor's license to renew such license; removing exemption of Florida Farm Wineries from prohibition against manufacturer being licensed as distributor or registered as exporter; providing for severability; providing for rulemaking authority; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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51 Section 1. Section 561.585, Florida Statutes, is created
52 to read:

53 561.585 Direct shipment of wine for personal
54 consumption.--

55 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

56 (a) Notwithstanding any provision of the Beverage Law or
57 any rule to the contrary, a person, firm, corporation, or other
58 entity that is licensed as a winery shipper under this section
59 may ship wine directly to any person who is at least 21 years of
60 age for personal use only and not for resale. To obtain or renew
61 a winery shipper's license, an applicant must:

62 1. Obtain and maintain a current license as a primary
63 American source of supply as provided in s. 564.045.

64 2. Provide to the division a true copy of its current wine
65 manufacturer's license issued by this state or another state and
66 a true copy of its current federal basic permit as a wine
67 producer issued in accordance with the Federal Alcohol
68 Administration Act.

69 3. Manufacture no more than 250,000 gallons of wine per
70 year.

71 4. Pay an annual license fee in the amount of \$250.

72 5. File with the division a surety bond acceptable to the
73 division in the sum of \$5,000 as surety for the payment of all
74 taxes provided that when, at the discretion of the division, the
75 amount of business done by the winery shipper licensee is such
76 volume that a bond of less than \$5,000 will be adequate, the
77 division may accept a bond in a lesser sum but not less than
78 \$1,000. The surety bond currently on file with the division for

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a winery pursuant to s. 561.37 is deemed to comply with this requirement. Any applicant that has a surety bond for another license on file with the division that is in excess of \$5,000 shall be deemed to be in compliance with this requirement.

(b) The division shall not issue or renew a license under this section if the applicant or licensee is owned by a winery that manufactures more than 250,000 gallons of wine annually.

(c) Winery shipper licensees shall not ship or cause to be shipped more than 42 gallons of wine per calendar year to a single address.

(d) Recipients shall not purchase to be shipped more than 42 gallons of wine per calendar year to a single address.

(2) LABEL.--Each winery shipper licensee shall ensure that the outside shipping label on each package is conspicuous and includes the following components:

(a) This package contains alcohol.

(b) An adult signature is required.

(c) The recipient must be at least 21 years of age.

(3) SIGNATURE.--

(a) Each winery shipper licensee and common carrier shall require, prior to delivery, that the signature of the addressee or other person at least 21 years of age is obtained after presentation of a valid driver's license, an identification card issued under the provisions of s. 322.051, or, if the person is physically handicapped, a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card.

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106 (b) A winery shipper licensee or common carrier who
107 violates this subsection shall have a complete defense to any
108 civil action therefor, except for any administrative action by
109 the division, if, at the time the alcoholic beverage was sold,
110 given, delivered, or transferred, the person falsely evidenced
111 that he or she was of legal age to purchase or consume the
112 alcoholic beverage and the appearance of the person was such
113 that an ordinarily prudent person would believe him or her to be
114 of legal age to purchase or consume the alcoholic beverage and
115 if the winery shipper licensee or common carrier acted in good
116 faith and in reliance upon the representation and appearance of
117 the person in the belief that he or she was of legal age to
118 purchase or consume the alcoholic beverage and carefully checked
119 one of the following forms of identification with respect to the
120 person: a valid driver's license, an identification card issued
121 under the provisions of s. 322.051, or, if the person is
122 physically handicapped, a comparable identification card issued
123 by another state which indicates the person's age, a passport,
124 or a United States Uniformed Services identification card.

125 (4) MONTHLY REPORT.--

126 (a) Each winery shipper licensee shall report monthly to
127 the division on forms prescribed by the division:

128 1. Whether any wine product was shipped into or within
129 this state under this section during the preceding month.

130 2. The total amount of wine shipped into or within this
131 state under this section during the preceding month.

132 3. The quantity and types of wine shipped into or within
133 this state under this section during the preceding month.

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134 4. The amount of excise tax paid to the division for
135 shipments of wine into or within this state under this section
136 during the preceding month.

137 (b) The report required by this subsection is not required
138 from a winery shipper licensee who files a monthly report
139 pursuant to s. 561.55 that contains all the information required
140 in paragraph (a). The division is authorized to prescribe the
141 format for submission of this information in order that
142 duplicate filings are eliminated.

143 (5) TAXES.--

144 (a) Each winery shipper licensee shall pay monthly to the
145 Department of Revenue all sales taxes and to the division all
146 excise taxes due on sales to persons in this state for the
147 preceding month. The amount of such taxes shall be calculated as
148 if the sale took place at the location where the delivery
149 occurred in this state.

150 (b) Each winery shipper licensee shall maintain for at
151 least 3 years after the date of delivery records of its
152 shipments into or within this state pursuant to this section,
153 including the names, addresses, amounts, and dates of all
154 shipments to persons in this state, and shall allow the
155 Department of Revenue or the division, upon request, to perform
156 an audit of such records.

157 (c) The cost of performing an audit under paragraph (b)
158 shall be assigned to the agency requesting the audit unless the
159 winery shipper licensee is found to be in material violation of
160 this subsection, in which case the cost of the audit shall be
161 assigned to the licensee.

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162 (6) JURISDICTION.--Each winery shipper licensee is deemed
163 to have consented to the jurisdiction of the division or any
164 other state agency and the courts of this state concerning
165 enforcement of this section and any related laws or rules.

166 (7) PENALTIES.--

167 (a) In addition to any other penalty provided in the
168 Beverage Law, the division may suspend or revoke a winery
169 shipper license or impose fines on the winery shipper licensee
170 in an amount not to exceed \$2,500 per violation for any
171 violation of this section.

172 (b) A winery shipper licensee that knowingly and
173 intentionally ships, or causes to be shipped, wine to any person
174 in this state who is under 21 years of age commits a felony of
175 the third degree, punishable as provided in s. 775.082, s.
176 775.083, or s. 775.084.

177 (c) Any common carrier, permit carrier, or other
178 commercial conveyance that knowingly and intentionally delivers
179 wine directly to any person in this state who is under 21 years
180 of age commits a felony of the third degree, punishable as
181 provided in s. 775.082, s. 775.083, or s. 775.084.

182 (d) A person who knowingly and intentionally obtains wine
183 from a winery shipper licensee in violation of this section
184 commits a misdemeanor of the second degree, punishable as
185 provided in s. 775.082 or s. 775.083.

186 Section 2. Section 561.54, Florida Statutes, is amended to
187 read:

188 561.54 Certain deliveries of beverages prohibited.--

189 (1) It is unlawful for common or permit carriers,
190 operators of privately owned cars, trucks, buses, or other
191 conveyances or out-of-state manufacturers or suppliers to make
192 delivery from without the state of any alcoholic beverage to any
193 person, association of persons, or corporation within the state,
194 except to qualified manufacturers, distributors, and exporters
195 of such beverages so delivered and to qualified bonded
196 warehouses in this state.

197 (2) Any licensee ~~aggrieved by a violation of this section~~
198 may bring an action in any court of competent jurisdiction to
199 recover for the state all moneys obtained by common carriers or
200 permit carriers; obtained by operators of privately owned cars,
201 trucks, buses, or other conveyances; or obtained by out-of-state
202 manufacturers or suppliers as a result of the delivery of
203 alcoholic beverages in violation of this section, and may obtain
204 a declaratory judgment that an act or practice violates this
205 section and enjoin any person from violating this section. In
206 addition to such relief, the court may order the confiscation
207 and destruction of any alcoholic beverages delivered in
208 violation of this section. In assessing damages, the court shall
209 enter judgment against a defendant for three times the amount of
210 the delivery charges proved or the fair market value of
211 merchandise unlawfully brought into the state. Payment or
212 satisfaction of any judgment under this section, other than for
213 costs and attorney's fees, shall be made in its entirety to the
214 state. In any successful action under this section, the court
215 shall award the plaintiff costs and reasonable attorney's fees.

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(3) This section does not apply to the shipment of wine by a winery shipper licensee to a person who is at least 21 years of age in accordance with s. 561.585.

Section 3. Section 561.545, Florida Statutes, is amended to read:

561.545 Certain shipments of beverages prohibited; penalties; exceptions.--The Legislature finds that the direct shipment of alcoholic beverages by persons in the business of selling malt or spirituous ~~alcoholic~~ beverages to residents of this state in violation of the Beverage Law poses a serious threat to the public health, safety, and welfare; to state revenue collections; and to the economy of the state. The Legislature further finds that the penalties for illegal direct shipment of malt or spirituous ~~alcoholic~~ beverages to residents of this state should be made adequate to ensure compliance with the Beverage Law and that the measures provided for in this section are fully consistent with the powers conferred upon the state by the Twenty-first Amendment to the United States Constitution.

(1) Any person in the business of selling malt or spirituous ~~alcoholic~~ beverages who knowingly and intentionally ships, or causes to be shipped, any malt or spirituous ~~alcoholic~~ beverage from an out-of-state location directly to any person in this state who does not hold a valid manufacturer's or wholesaler's license or exporter's registration issued by the Division of Alcoholic Beverages and Tobacco or who is not a state-bonded warehouse is in violation of this section.

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243 (2) Any common carrier or permit carrier or any operator
244 of a privately owned car, truck, bus, or other conveyance who
245 knowingly and intentionally transports any malt or spirituous
246 beverages ~~alcoholic beverage~~ from an out-of-state location
247 directly to any person in this state who does not hold a valid
248 manufacturer's or wholesaler's license or exporter's
249 registration or who is not a state-bonded warehouse is in
250 violation of this section.

251 (3) Any person found by the division to be in violation of
252 subsection (1) shall be issued a notice, by certified mail, to
253 show cause why a cease and desist order should not be issued.
254 Any person who violates subsection (1) within 2 years after
255 receiving a cease and desist order or within 2 years after a
256 prior conviction for violating subsection (1) commits a felony
257 of the third degree, punishable as provided in s. 775.082, s.
258 775.083, or s. 775.084.

259 (4) Any common carrier or permit carrier, or any operator
260 of a privately owned car, truck, bus, or other conveyance found
261 by the division to be in violation of subsection (2) as a result
262 of a second or subsequent delivery from the same source and
263 location, within a 2-year period after the first delivery shall
264 be issued a notice, by certified mail, to show cause why a cease
265 and desist order should not be issued. Any person who violates
266 subsection (2) within 2 years after receiving the cease and
267 desist order or within 2 years after a prior conviction for
268 violating subsection (2) commits a felony of the third degree,
269 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

270 (5) This section does not apply to:

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271 (a) The direct shipment of sacramental alcoholic beverages
272 to bona fide religious organizations as authorized by the
273 division;

274 (b) The ~~er-to~~ possession of alcoholic beverages in
275 accordance with s. 562.15(2); or

276 (c) The shipment of wine in accordance with s. 561.585.

277 Section 4. Subsections (1) and (6) of section 561.57,
278 Florida Statutes, are amended to read:

279 561.57 Deliveries by licensees.--

280 (1) Vendors shall be permitted to make deliveries away
281 from their places of business of sales actually made at the
282 licensed place of business; provided, telephone or mail orders
283 received at vendor's licensed place of business shall be
284 construed as a sale actually made at the vendor's licensed place
285 of business. For purposes of this section, Internet orders shall
286 be construed as telephone orders.

287 (6) Common carriers are not required to have vehicle
288 permits to transport alcoholic beverages. Nothing in this
289 section shall prohibit any common carrier or any licensee or
290 other person utilizing a common carrier as his or her agent from
291 making deliveries of alcoholic beverages within the state.
292 Deliveries of alcoholic beverages by common carriers or by
293 licensees or other persons utilizing common carriers as their
294 agents under this section are exempt from the report filing
295 requirements in s. 562.20. All common carriers acting as
296 designated agents for delivery under this section shall verify
297 that any person receiving alcoholic beverages is at least 21
298 years of age upon the delivery of such alcoholic beverages, as

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prescribed in division rules. Compliance with the prescribed age verification measures in s. 561.585(3) shall give the common carrier and the licensee or other person hiring the common carrier a complete defense of selling, giving, delivering, or transferring alcoholic beverages to any person under the age of 21.

Section 5. Subsection (1) of section 599.004, Florida Statutes, is amended to read:

599.004 Florida Farm Winery Program; registration; logo; fees.--

(1) The Florida Farm Winery Program is established within the Department of Agriculture and Consumer Services. Under this program, a winery may qualify as a tourist attraction only if it is registered with and certified by the department as a Florida Farm Winery. A winery may not claim to be certified unless it has received written approval from the department.

(a) To qualify as a certified Florida Farm Winery, a winery shall meet the following standards:

1. Produce or sell less than 250,000 gallons of wine annually of which 60 percent of wine produced shall be made from this state's agricultural products. The Commissioner of Agriculture may waive this requirement in times of hardship.

2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.

3. Be open to the public for tours, tastings, and sales at least 30 hours each week.

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325 4. Make annual application to the department for
326 recognition as a Florida Farm Winery, on forms provided by the
327 department.

328 5. Pay an annual application and registration fee of \$100.

329 (b) To maintain certification and recognition as a Florida
330 Farm Winery, a winery must comply with the qualifications
331 provided in this section. The Commissioner of Agriculture is
332 authorized to officially recognize a certified Florida Farm
333 Winery as a state tourist attraction.

334 Section 6. Subsection (5) of section 561.24, Florida
335 Statutes, is amended to read:

336 561.24 Licensing manufacturers as distributors or
337 registered exporters prohibited; procedure for issuance and
338 renewal of distributors' licenses and exporters'
339 registrations.--

340 (5) Notwithstanding any of the provisions of the foregoing
341 subsections, any corporation which holds a license as a
342 distributor on June 3, 1947, shall be entitled to a renewal
343 thereof, provided such corporation complies with all of the
344 provisions of the Beverage Law of Florida, as amended, and of
345 this section and establishes by satisfactory evidence to the
346 division that, during the 6-month period next preceding its
347 application for such renewal, of the total volume of its sales
348 of spirituous liquors, in either dollars or quantity, not more
349 than 40 percent of such spirituous liquors sold by it, in either
350 dollars or quantity, were manufactured, rectified, or distilled
351 by any corporation with which the applicant is affiliated,
352 directly or indirectly, including any corporation which owns or

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353 controls in any way any stock in the applicant corporation or
354 any corporation which is a subsidiary or affiliate of the
355 corporation so owning stock in the applicant corporation. Any
356 manufacturer of wine holding a license as a distributor on July
357 1, 2006, ~~the effective date of this act~~ shall be entitled to a
358 renewal of such license notwithstanding the provisions of
359 subsections (1)-(5). ~~This section does not apply to any winery~~
360 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

361 Section 7. Should any portion of this act be held
362 unconstitutional, it is the intent of the Legislature that the
363 courts disturb only as much of the regulatory system of this
364 state as is necessary to enforce the United States Constitution.

365 Section 8. The Division of Alcoholic Beverages and Tobacco
366 of the Department of Business and Professional Regulation and
367 the Department of Revenue may adopt rules pursuant to ss.
368 120.536(1) and 120.54, Florida Statutes, to implement and
369 administer this act.

370 Section 9. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 247 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Remove line(s) 144-145 and insert:

(a) Each winery shipper licensee shall collect and remit
monthly to the Department of Revenue all sales taxes and pay to
the division all

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. 247 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Remove line(s) 147 and insert:

preceding month. Notwithstanding s. 212.0596, the amount of such
taxes shall be calculated as

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. 247 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Between line(s) 54 and 55 insert:

(1) LEGISLATIVE INTENT.-- It is the intent of the
legislature to maintain this state's comprehensive system of
licensed, taxed, and regulated importation of alcoholic
beverages into Florida except as expressly authorized in this
section.

(Reassign subsequent subsections)

===== T I T L E A M E N D M E N T =====

Remove line(s) 7 and insert:

F.S.; stating Legislative intent; authorizing certain direct
shipments of wine;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

Bill No. 247 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Between line(s) 61 and 62 insert:

1. File an application with the division on forms
prescribed by the division.

2. Qualify for licensure under ss. 561.15 and 561.17 or
provide a true copy of a certification from the alcoholic
beverage licensing authority of the federal government or the
state in which the winery is located that qualifications for
that winery license include at a minimum the following
components:

a. Fingerprinting of applicants;
b. Disqualification for applicants under 21 years of age;
and
c. Disqualification for applicants convicted of the
following:

(I) any violation of the beverage laws of this state, the
United States, or any other state in the past five years;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

21 (II) any felony in this state or any other state of the
22 United States within the past 15 years; and
23 (III) any criminal violation of the controlled substance
24 act of this state, the United States, or any other state.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 5 (for drafter's use only)

Bill No. 249 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Between line(s) 364 and 365 insert:

Section 8. Notwithstanding the provisions of s. 561.585,
contracts not otherwise prohibited by the beverage law shall not
be impaired.

===== T I T L E A M E N D M E N T =====

Between line(s) 45 and 46 insert:

providing for non-impairment of contracts;

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Amendment No. 6

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER		

Representative(s) Bogdanoff offered the following:

Remove line(s) 83 - 90 and insert:

(d) Winery shipper licensees shall not ship or cause to be shipped more than 18 cases of wine per calendar year to one adult individual.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 7 (for drafter's use only)

Bill No. 247 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Bogdanoff offered the following:

Amendment (with directory and title amendments)

Between line(s) 185 and 186 insert:

Section 2. Subsection (8) of Section 561.14 is created to read:

561.14 Licenses and registrations referred to in the Beverage Law shall be classified as follows:

(8) Wineries licensed as winery shippers under s. 561.585.

===== T I T L E A M E N D M E N T =====



Remove line(s) 22 and insert:

penalties; amending s. 561.14, F.S.; classifying the winery shipper license; amending s. 561.54, F.S.; removing a provision

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Negron and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Levin 	Diez-Arguelles 
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides that no sales tax will be collected on the first \$5,000 of the sales price of any item of tangible personal property or admission to an event purchased by an individual for personal consumption during the seven-day period of July 31, 2006 through August 6, 2006.

The tax-free period does not apply to :

- Purchases made by a business, as defined in s. 212.02(2), Florida Statutes;
- Purchases by an individual to be used in business;
- Rental car surcharges paid pursuant to s. 212.0606, Florida Statutes;
- Sales from vending machines taxed pursuant to s. 212.0515, Florida Statutes;
- Dues and fees paid to private clubs and membership clubs described in s. 212.02(1), Florida Statutes;
- Service warranties taxed pursuant to s. 212.0506, Florida Statutes;
- Charges for the use of coin operated amusement machines, pursuant to s. 212.05(1)(h), Florida Statutes;
- Discretionary sales surtaxes as described in ss. 212.054 and 212.055, Florida Statutes;
- Convention development taxes as described in s. 212.0305, Florida Statutes; and
- Local option food and beverage taxes levied pursuant to s. 212.0306, Florida Statutes.

Retailers selling single items of tangible personal property having a sales price of \$1,000 or more will be required to obtain a Florida Sales Tax Purchaser's Certification of Personal Consumption.

The preliminary estimate of the fiscal impact of the bill is approximately negative (\$350 million) in state revenues and negative (\$88 million) in local revenues during FY 2006-2007.

The estimated reduction in Local Option Sales Tax by this bill is approximately a negative (\$38 million). The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

The bill provides an appropriation to the Department of Revenue of \$400,000 from the General Revenue Fund in FY 2006-2007 to administer the bill.

The bill is effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0691.FT.doc
DATE: 3/23/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes – The bill eliminates sales tax on tangible personal property and admissions during the period of the sales tax holiday, which will be seven days beginning July 31, 2006.

B. EFFECT OF PROPOSED CHANGES:

Chapter 212, Florida Statutes, imposes sales tax on the retail sale, storage or use of tangible personal property and admissions purchased by individuals for personal consumption. These items will be exempt from sales tax for the seven day period of July 31, 2006 through August 6, 2006.

History of Sales Tax Holidays

Since 1998, the Legislature has enacted a number of tax relief acts which provided that various items of apparel and back to school supplies would not be subject to sales tax during a nine-day period. The tax holidays took place sometime between late July and mid-August. Back to school sales tax holidays have occurred in 1998, 1999, 2000, 2001, 2004 and 2005. In 2005, the Florida Legislature also enacted a separate sales and use tax holiday for certain enumerated "hurricane" supplies. That holiday occurred from June 1, 2005 through June 12, 2005.

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The bill provides that no sales tax will be collected on the first \$5,000 of the sales price of any item of tangible personal property or admission to an event purchased by an individual for personal consumption during the seven-day period of July 31, 2006 through August 6, 2006.

The tax-free period does not apply to :

- Purchases made by a business, as defined in s. 212.02(2), Florida Statutes;
- Purchases by an individual to be used in business;
- Rental car surcharges paid pursuant to s. 212.0606, Florida Statutes;
- Sales from vending machines taxed pursuant to s. 212.0515, Florida Statutes;
- Dues and fees paid to private clubs and membership clubs described in s. 212.02(1), Florida Statutes;
- Service warranties taxed pursuant to s. 212.0506, Florida Statutes;
- Charges for the use of coin operated amusement machines, pursuant to s. 212.05(1)(h), Florida Statutes;
- Discretionary sales surtaxes as described in ss. 212.054 and 212.055, Florida Statutes;
- Convention development taxes as described in s. 212.0305, Florida Statutes; and
- Local option food and beverage taxes levied pursuant to s. 212.0306, Florida Statutes.

Retailers that sell single items of tangible personal property having a sales price of \$1,000 or more are required to obtain from the purchaser and keep a Florida Sales Tax Purchaser's Certification of Personal Consumption, which the purchaser shall sign under penalties of perjury and which includes the purchaser's mailing address.

The bill grants the Department of Revenue authority to promulgate rules to implement the provisions of the bill.

The bill provides an appropriation of \$400,000 from the General Revenue Fund to the Department of Revenue to administer the sales tax holiday.

C. SECTION DIRECTORY:

Section 1. Creates a sales tax holiday on the first \$5,000 of the sales price of all tangible personal property and admissions purchased for personal consumption during the seven day period beginning July 31, 2006 and ending August 6, 2006. The holiday does not include purchases made by businesses or by individuals to be used in a business. The Department of Revenue is given broad rulemaking authority to administer the holiday. This section includes an appropriation of \$400,000 from the General Revenue Fund to the Department of Revenue to administer the bill.

Section 2. Provides an effective date of becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is estimated to reduce state revenues by approximately \$350m. The Revenue Estimating Conference has not provided an official estimate.

2. Expenditures:

The bill provides an appropriation from the General Revenue Fund to the Department of Revenue of \$400,000 to administer the sales tax holiday.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is estimated to reduce local revenues by approximately \$88m. The Revenue Estimating Conference has not provided an official estimate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Retailers may experience additional sales as a result of the holiday.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The estimated reduction in Local Option Sales tax by this bill is approximately negative (\$88 million). The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

2. Other:

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes the Department of Revenue to adopt rules to implement and administer the tax free period.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to the tax on sales, use, and other transactions; providing for noncollection of the tax on a portion of the sales price of certain transactions during a certain period of time; providing exceptions; requiring retailers to obtain a signed certificate of personal consumption from purchasers of certain items; providing penalties; authorizing the Department of Revenue to adopt rules; providing criteria; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Except as otherwise provided in this section, during the period from 12:01 a.m., July 31, 2006, through midnight, August 6, 2006, the tax levied under the provisions of chapter 212, Florida Statutes, shall not be collected on the first \$5,000 of the sales price of, or consideration paid for, any item of tangible personal property or admission to an event purchased by an individual for personal consumption. This subsection does not apply to purchases made by a business as defined in s. 212.02(2), Florida Statutes, or by an individual to be used in a business.

(2) The provisions of subsection (1) do not apply to:

(a) Rental car surcharges paid pursuant to s. 212.0606, Florida Statutes.

(b) Sales from vending machines taxed pursuant to s. 212.0515, Florida Statutes.

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(c) All dues and fees paid to private clubs and membership clubs, as described in s. 212.02(1), Florida Statutes.

(d) Service warranties taxed pursuant to s. 212.0506, Florida Statutes.

(e) Charges for the use of coin-operated amusement machines under s. 212.05(1)(h), Florida Statutes.

(f) Discretionary sales surtaxes levied pursuant to ss. 212.054 and 212.055, Florida Statutes.

(g) Convention development taxes levied pursuant to s. 212.0305, Florida Statutes.

(h) Local option food and beverage taxes levied pursuant to s. 212.0306, Florida Statutes.

(3) A retailer that sells any single item of tangible personal property having a sales price of \$1,000 or more shall obtain from the purchaser and keep a Florida Sales Tax Purchaser's Certification of Personal Consumption which the purchaser shall sign under the penalties of perjury and include the purchaser's mailing address.

(4) Notwithstanding chapter 120, Florida Statutes, the Department of Revenue may adopt rules to implement and administer this section. It is the intent of the Legislature that these rules provide a broad sales tax exemption for items purchased during the tax holiday. The department is specifically authorized to develop and adopt rules applying to and including, but not limited to, the contents of the Florida Sales Tax Purchaser's Certification of Personal Consumption, multiple items on one invoice, bundled transactions, coupons and discounts, exchanges, layaway sales, special order items, rain

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57 checks, rebates, splitting of items normally sold together,
58 returns, and erroneously collected taxes.

59 (5) The sum of \$400,000 is appropriated from the General
60 Revenue Fund to the Department of Revenue for purposes of
61 administering this section.

62 Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 691

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Finance & Tax Committee
Representative(s) offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Except as otherwise provided in this section, during the period from 12:01 a.m., July 31, 2006, through midnight, August 6, 2006, the tax levied under the provisions of chapter 212, Florida Statutes, shall not be collected on the first \$5,000 of the sales price of, or consideration paid for, any item of tangible personal property, or admission occurring during the tax-free period, purchased during the tax-free period by an individual for personal consumption. This subsection does not apply to purchases made in the course of conducting business as defined in s. 212.02(2), Florida Statutes, or by an individual to be used in a business.

(2) The provisions of subsection (1) do not apply to:

(a) Rental car surcharges paid pursuant to s. 212.0606, Florida Statutes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

23 (b) Transient rentals tax paid pursuant to s. 212.03,
24 Florida Statutes.

25 (c) Tax on rental or license fee for use of real property
26 paid pursuant to s. 212.031, Florida Statutes.

27 (d) Tax on the lease or rental of any tangible personal
28 property.

29 (e) Sales from vending machines taxed pursuant to s.
30 212.0515, Florida Statutes.

31 (f) All dues and fees paid to private clubs and membership
32 clubs, as described in s. 212.02(1), Florida Statutes.

33 (g) Sales of annual admissions, season admissions or any
34 admission as described in s. 212.02(1), Florida Statutes, which
35 is valid for any day prior to July 31, 2006 or after August 6,
36 2006.

37 (h) Occasional or isolated sales of aircrafts, boats,
38 mobile homes, or motor vehicles as described in s. 212.05(i)(b),
39 Florida Statutes, when the title of the aircraft, boat, mobile
40 home or motor vehicle is endorsed and ownership is transferred
41 prior to or after the conclusion of the tax holiday.

42 (i) Service warranties taxed pursuant to s. 212.0506,
43 Florida Statutes.

44 (j) Charges for the use of coin-operated amusement
45 machines pursuant to s. 212.05(1)(h), Florida Statutes.

46 (k) Any fees imposed on items of tangible personal
47 property administered by the Department of Revenue under Chapter
48 212, Florida Statutes, including, but not limited to, the lead
49 acid battery fee and the waste tire fee. However, the
50 provisions of subsections (1) do apply to the tax applicable to
51 the fees.

52 (3) Notwithstanding Chapter 120, Florida Statutes, the
53 Department of Revenue may adopt rules to implement and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

administer this section. It is the intent of the Legislature that these rules apply the definitions in Chapters 212 and provide a broad sales tax exemption for items actually purchased during the tax holiday, including mail order purchases, layaways, rain checks, and special orders for which payment in full is made during the tax free period. The department is specifically authorized to develop and adopt rules applying to and including, but not limited to, multiple items on one invoice, bundled transactions, coupons and discounts, exchanges, rebates, splitting of items normally sold together, returns, and erroneously collected taxes.

(5) The sum of \$400,000 is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering this section.

Section 2. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

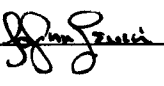
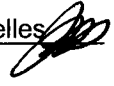
Remove the entire title and insert:

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; providing for noncollection of the tax on a portion of the sales price of certain transactions during a certain period of time; providing exceptions; providing penalties; authorizing the Department of Revenue to adopt rules; providing criteria; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FT 06-06 State Financial Matters
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee		Levin 	Diez-Arguelles 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill makes a number of changes to the planning and budgeting process, particularly provisions relating to the state's financial accounting policies.

The bill has an effective date of July 1, 2006 unless otherwise indicated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Planning and Budgeting Law: Chapter 216, Florida Statutes, provides guidelines to the Governor, the judicial branch and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. Over the years, the statute has been modified to incorporate most of the functions related to the state budgetary process; from consensus estimating conferences to the single audit act. The result is an aggregation of topics that periodically require updating in order to keep abreast of the current budgetary practices of the state.

Consensus Estimating Conferences: Section 216.136, F.S., creates consensus estimating conferences. These conferences develop official estimates of revenues, workload, expenditures, and other information related to budgeting. Executive agencies are required to use the conferences' official information for budgeting purposes.

Budget Stabilization Fund and Unallocated General Revenue

Section 215.32, F.S., requires all moneys received by the state to be deposited into the State Treasury, unless specifically provided otherwise. The State Treasury is comprised of the three types of funds. These include the General Revenue Fund, the Budget Stabilization Fund and the various trust funds.

The Budget Stabilization Fund, created constitutionally, is used to fund emergencies and revenue shortfalls as specified in the Constitution. Under current law, any money transferred from the Budget Stabilization Fund must be repaid beginning in the following fiscal year.

Unallocated General Revenue is considered the state's working capital balance. These unallocated funds can be used to provide financing during a state of emergency, to fund claims of loss of certain cultural properties covered by an indemnity agreement with the Department of State, and reimbursement to health care practitioners during a state of emergency.

Florida Financial Management Information System

The Florida Financial Management Information System (FFMIS) is the primary means by which information needed to plan and account for the delivery of services to Florida's citizens is acquired and disseminated. It includes subsystems for planning and budgeting (LASPBS), accounting (FLAIR), cash management (CMS), purchasing (SPURS), and personnel (COPES). Common financial management data codes must be established by the FFMIS coordinating council. Data codes specified by the Auditor General do not require board approval.

Whenever any modification to the functional system specifications is proposed, the Auditor General must participate to the extent necessary to assure that the accounting information adheres to generally accepted accounting principles, and that the information subsystem is auditable.

The Auditor General is permitted to specify any additional features, characteristics, controls and internal control measures necessary to carry out these responsibilities. The functional owners of the subsystems must incorporate all of these specifications.

Florida Single Audit Act

The Florida Single Audit Act provides uniform state auditing requirements, utilizes coordinated efforts in auditing, and ensures that agencies follow up on audits.

The Department of Financial Services is the lead agency – adopting rules necessary to provide appropriate guidance to state awarding agencies, recipients and independent auditors; coordinating the initial preparation and subsequent revisions of the Catalog of State Financial Assistance; and coordinating the initial preparation and subsequent revisions of the State Projects Compliance Supplement.

The Chief Financial Officer has the responsibility to make enhancements to the state's accounting system regarding state financial assistance, and to perform inspections, reviews, investigations, and audits of state financial assistance necessary to carry out the legal responsibilities for state financial assistance.

The Auditor General has the authority to audit state financial assistance provided to any nonstate entity, to adopt rules relating to the auditing standards that independent auditors are to follow for audits of nonstate entities, and to provide technical assistance upon request by the Governor, Chief Financial Officer or state agencies.

The Florida Single Audit Act allows for the audit of nonstate entities receiving state financial assistance to be conducted by independent auditors annually, reviewing the entire financial statements of the nonstate entity.

Salary Rate

Current law defines "salary rate" as the monetary compensation authorized to be paid a position on an annualized basis. In short, rate represents purely salary and does not include moneys authorized for benefits associated with the position.

EXAMPLE:

Annual salary = \$20,000 Salaries and Benefits budget = \$25,000
Salary rate = 20,000

Salary rate is the mechanism used in Florida to control overall salary expenditures and avoid unanticipated costs to annualize agency personnel actions, especially those actions occurring late in the fiscal year. Absent a control on salary rate, agencies would be limited only to the total level of salaries and benefits budget for purposes of implementing personnel decisions. This would allow agencies to implement position upgrades or pay raises late in the fiscal year, when the budget impact is small enough to be absorbed within the agency's total budget for the year. However, the annual impact of those decisions would not be covered automatically in the next year's budget, thus creating an immediate salary deficit.

Legislative Budget Requests

Section 216.023, F.S., outlines the processes each agency must follow in developing its legislative budget request. No later than July 15th of each year, the legislative budget instructions (jointly developed by the Legislature and the Governor's Office) shall be submitted to each state agency and the judicial branch.

Agencies and the judicial branch submit measures with their legislative budget request (LBR) on October 15. Measures are reviewed during the development of the house and senate budgets and then approved by the Legislature with the passage of the General Appropriation Act (GAA). Under the current process all agencies must submit revisions to measures and standards by June 30th following passage of the GAA to reflect changes.

The law requires the legislative budget request to include, among other items, information on expenditures for 3 fiscal years, details on trust funds and fees, and issue narrative justifying changes in amounts and positions requested. In addition, each agency must submit an inventory of all litigation in which the agency is involved that may require additional appropriations.

No later than October 15, the agency head must submit the agency's request to the Legislature and the Governor in the form and manner prescribed in the budget instructions. The request must be based on the agency's independent assessment of need. The judicial branch and the Division of Administrative Hearings must submit the requests directly to the Legislature, with a copy to the Governor, no later than October 15.

The Governor or the chairs of the appropriations committees may request agencies to address major issues. The request regarding such issues must be submitted to the agencies no later than July 30. The Governor or the chairs also may request the agencies to submit "target budgets" by September 30. The target budget may require the agencies to prioritize budget issues and may include requests for multiple options for the budget issues.

Governor's Recommended Budget

At least 30 days prior to the Regular Session of the Legislature, the Governor is required to submit a recommended balanced budget for the state, based on the Governor's own conclusions and judgment. However, s. 216.081, F.S., requires the Governor to include data submitted by the legislative and judicial branches to be included in the Governor's recommended budget without modification by the Governor.

Section 216.167, F.S., requires the Governor's recommended budget to include a financial schedule of the recommended recurring revenues available in, and the recurring and nonrecurring expenditures from, the Budget Stabilization Fund and the General Revenue Fund.

Section 216.168, F.S., allows the Governor to amend the recommended budget at any time. However, if the Governor determines that the recommendations are no longer supported by the official estimate of revenues, the Governor must bring his recommended budget into balance.

Budget Amendments

Section 216.181, F.S., provides that the General Appropriations Act and other acts containing appropriations shall be considered the approved operating budget for operational and fixed capital outlay expenditures. The approved operating budget may be modified under certain circumstances.

Section 216.181, F.S., delegates to the Governor, for the executive branch, and the Chief Justice, for the judicial branch, the authority to increase trust fund budget authority by up to \$1 million. The law delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, an increase in trust fund budget authority in excess of \$1 million.

Section 216.292, F.S., delegates to the agency heads the authority to transfer funds within the approved operating budget in certain instances. So long as no category is changed by more than 5 percent of the original approved budget, or \$250,000, whichever is greater, an agency head is permitted to transfer budget authority (a) between appropriation categories within the same budget entity, and (b) between budget entities within identical categories. The agency head is also permitted

to transfer funds within programs identified within the General Appropriations Act from identical funding sources between specific appropriation categories as long as the transfer does not result in an increase to the total recurring general revenue or trust fund cost of the agency in the next fiscal year.

Section 216.292, F.S., delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, a transfer of general revenue funds within a state agency or the judicial branch and a transfer of trust fund budget authority in excess of the agency head's discretion.

Notice of budget amendments must be provided to the chair and vice chair of the Legislative Budget Commission at least 14 days prior to the action or at least 3 days prior to a release of funds. The chair and vice chair of the Legislative Budget Commission or the presiding officers of the Legislature may void a budget action if notice is provided in writing to the Governor, for the executive branch, or the Chief Justice, for the judicial branch, that such action exceeds delegated authority or is contrary to legislative policy and intent. If such notice is given, the Governor or Chief Justice must void such budget action until the Legislative Budget Commission or Legislature addresses the issue.

Certified Forwards

Section 216.301, F.S., requires each agency head to certify to the Executive Office of the Governor on or before August 1 of each year the balance of any appropriation not disbursed but expended or contracted or committed to be expended. On or before September 1, the Executive Office of the Governor must review and approve or disapprove each item and the amounts certified by the agency head.

The unexpended balance of any appropriation for fixed capital outlay subject to, but not under the terms of, a binding contract by February 1 after the date of certification, or the next February 1 if the project is an educational facility or a construction project for a university, shall revert and be available for reappropriation.

For appropriations other than fixed capital outlay, any encumbered balance remaining undisbursed on December 31 shall revert to the fund from which appropriated.

See the Section Director for the changes made by PCB FT 06-06.

C. SECTION DIRECTORY:

Section 1. Amends s. 11.243, F.S., to require proceeds from the sale of Florida Statutes be deposited into the Grants and Donations Trust Fund within the Legislature.

Section 2. Amends s. 11.513, F. S., to clarify the application of the section to the judicial branch of government. It requires additional data be included in the plans for monitoring major programs of state agencies and in the reviews of those programs and provides for the Office of Program Policy Analysis and Government Accountability to review agency performance standards and report to the Governor, the Legislature, and the Legislative Budget Commission. Conforms language to changes made in s. 216.1827, F.S.

Section 3. Amends s. 20.435, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 4. Amends s. 215.18, F.S., and provides for notice and review pursuant to s. 216.177, F.S., for temporary trust fund transfers from funds authorized to cover deficits.

Section 5. Amends s. 215.3206, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of review by the Governor, Chief Justices and agencies.

Section 6. Amends s. 215.3208, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of legislative review of trust funds.

Section 7. Amends s. 215.35, F.S., and requires the Chief Financial Officer to uniquely identify all warrants for purposes of audit and reconciliation. Removes language that contains specific requirements to number warrants by fiscal year and to include the voucher number on the warrant.

Section 8. Amends s. 215.422, F.S., and revises the current prompt payment process to facilitate transition to a new accounting system to provide the ability for the Chief Financial Officer to improve federal reporting. It replaces the term "voucher" with "invoice". It clarifies that agencies need to approve the invoice in the state financial system within 20 days. It defines as an error, the failure to submit the proper tax payer identification information documentation by a vendor, and requires the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

Section 9. Amends s. 215.97, F.S., to change the method of tracking state financial assistance expenditures in order to accommodate changes to the state's financial system.

Section 10. Amends s. 216.011, F.S., to define "incurred obligation" for purposes of financial matters. It also amends s. 216.013, F.S., and defines Salary Rate Reserve for purposes of managing the approved budget, and it provides that capitalization threshold provisions relating to Operating Capital Outlay are defined pursuant to s. 273.025, F.S.

Section 11. Amends s. 216.013, F.S., to provide for inclusion of performance measures and standards in long-range program plans.

Sections 12. Amends s. 216.023, F.S., to remove references to performance measures and standards from requirements for submission of legislative budget requests by agencies and the judicial branch.

Section 13. Amends s. 216.134, F.S., to include in the general provisions relating to estimating conferences, that the responsibility for presiding over sessions of the estimating conferences shall be rotated among the principals.

Section 14. Amends s. 216.136, F.S., to standardize the composition of each estimating conference.

Section 15. Amends s. 216.177, F.S., and renames procedures set forth in s.216.177, F.S. from "notice and review" to "notice and objection".

Section 16. Amends s. 216.178, F.S., and changes the date the Final Budget Report is due from October 15th to October 30th.

Section 17. Amends s. 216.181, F.S., and requires the Executive Office of the Governor or the Chief Justice of the Supreme Court to submit a detailed plan to allocate lump-sum budget categories to the chairs of appropriations committees.

Section 18. Amends s. 216.1811, F.S., and requires the Governor and Chief Financial Officer to make changes to the original approved operating budgets as directed by presiding officers of the Legislature.

Section 19. Amends s. 216.1815, F.S., to make conforming changes

Section 20. Creates s. 216.1827, F.S., which establishes new procedures for maintaining and revising performance measures.

Section 21. Amends s. 216.292, F.S., and revises procedures for 5 percent transfer authority between agency budget categories.

Section 22. Amends s. 216.301, F.S., as amended by Ch. 2005-152, L.O.F., to revise the process relating to the certification forward of unspent budget authority. It changes the date by which the Governor's Office of Planning and Budgeting must furnish Fixed Capital Outlay budget reversions to the Chief Financial Officer from February 20th to February 28th.

Section 23. Amends s. 252.37, F.S., and clarifies that the Legislative Budget Commission must approve budget amendments which transfer funds from unappropriated surplus funds to provide funding for emergencies.

Section 24. Amends s. 273.02, F.S., and provides that procedures for recording property in the state's financial system for purposes of inventory will be established by rule by the Chief Financial Officer.

Section 25. Creates s. 273.025, F.S. and provides that capitalization requirements for property recorded in the state's financial system will be established by rule by the Chief Financial Officer.

Section 26. Amends s. 273.055, F.S., and transfers the Auditor General's rule making responsibilities relating to state owned tangible personal property to the Chief Financial Officer.

Section 27. Amends s. 274.02, F.S., to provide that the requirements for recording property will be established by rule rather than statute. It transfers responsibility from the Auditor General to the Chief Financial Officer.

Section 28. Amends s. 338.2116, F.S., and changes the date which the Department of Transportation's unspent budget shall be carried forward to September 30th.

Section 29. Amends s. 1011.57, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 30. Repeals s. 215.29, F.S.

Section 31. Provides that this section takes effect upon becoming law. Also provides an effective date of July 1, 2006 unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; nor does it reduce the authority that cities or counties have to raise revenues in the aggregate; and it does not reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Expressly granted to the Chief Financial Officer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

→→I

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to state financial matters; amending s.
3 11.243, F.S.; providing for the moneys collected from the
4 sale of the Florida Statutes or other publications to be
5 deposited in a specified trust fund; amending s. 11.513,
6 F.S.; requiring the Chief Justice of the Supreme Court to
7 develop program monitoring plans; requiring that
8 additional data be included in the plans for monitoring
9 major programs of state agencies and the judicial branch
10 and in the reviews of those programs; providing for the
11 Office of Program Policy Analysis and Government
12 Accountability to review agency and judicial branch
13 performance standards and report to the Governor, the
14 Legislature, and the Legislative Budget Commission;
15 amending s. 20.435, F.S.; revising a provision relating to
16 certain undisbursed balances of appropriations from the
17 Biomedical Research Trust Fund; amending s. 215.18, F.S.;
18 requiring that the Governor provide prior notice of
19 transfers between certain funds; amending s. 215.3206,
20 F.S.; replacing references to a 6-digit fund code in the
21 Florida Accounting Information Resource Subsystem with a
22 classification scheme consistent with the Department of
23 Financial Services' financial systems; amending s.
24 215.3208, F.S.; revising references to conform; amending
25 s. 215.35, F.S.; revising a provision relating to the
26 numbering of warrants issued by the Chief Financial
27 Officer; amending s. 215.422, F.S.; replacing a reference
28 to certain vouchers with the terms "invoice" or
29 "invoices"; clarifying that agencies or the judicial

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30	branch record and approve certain invoices by a specified
31	date; revising provisions relating to the Department of
32	Financial Services' approval of payment of certain
33	invoices; providing that a vendor who does not submit the
34	appropriate federal taxpayer identification documentation
35	to the department will be deemed an error on the part of
36	the vendor; revising references to conform; amending s.
37	215.97, F.S.; removing a reference to the appropriations
38	act in a provision relating to the purposes of the Florida
39	Single Audit Act; amending s. 216.011, F.S.; revising the
40	definition of "operating capital outlay"; defining the
41	terms "incurred obligation" and "salary rate reserve" for
42	purposes of state fiscal affairs, appropriations, and
43	budgets; amending s. 216.013, F.S.; revising requirements
44	for information regarding performance measures to be
45	included in the long-range program plans of state agencies
46	and the judicial branch; revising a provision relating to
47	making adjustments to long-range program plans; amending
48	s. 216.023, F.S.; revising certain requirements for
49	legislative budget requests; deleting a provision
50	requiring agencies to maintain a certain performance
51	accountability system and provide a list of performance
52	measures; deleting a provision relating to adjustments to
53	executive agency performance standards; deleting a
54	provision relating to adjustments to judicial branch
55	performance standards; amending s. 216.134, F.S.;
56	providing for the responsibility of presiding over
57	sessions of consensus estimating conferences; amending s.
58	216.136, F.S.; revising provisions relating to the

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59 principals of consensus estimating conferences; revising
60 the duties of certain agencies relating to the Criminal
61 Justice Estimating Conference, the Social Services
62 Estimating Conference, and the Workforce Estimating
63 Conference; amending s. 216.177, F.S.; clarifying the
64 circumstances under which the Executive Office of the
65 Governor and the Chief Justice of the Supreme Court are
66 required to provide notice to the chair and vice chair of
67 the Legislative Budget Commission; amending s. 216.178,
68 F.S.; revising the date by which the Office of Planning
69 and Budgeting must produce a final budget report; amending
70 s. 216.181, F.S.; providing that amendments to certain
71 approved operating budgets are subject to objection
72 procedures; requiring that state agencies submit to the
73 chair and vice chair of the Legislative Budget Commission
74 a plan for allocating any lump-sum appropriation in a
75 budget amendment; creating s. 216.1811, F.S.; providing
76 requirements for the Governor and the Chief Financial
77 Officer relating to certain approved operating budgets for
78 the legislative branch and appropriations made to the
79 legislative branch; amending s. 216.1815, F.S.; revising
80 certain requirements for the performance standards
81 included in an amended operating budget plan and request
82 submitted to the Legislative Budget Commission; creating
83 s. 216.1827, F.S.; requiring that each state agency and
84 the judicial branch maintain a performance accountability
85 system; requiring agencies and the judicial branch to
86 submit specified information to the Executive Office of
87 the Governor and the Legislature or the Office of Program

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88	Policy Analysis and Government Accountability for review;	
89	providing guidelines for requests to delete or amend	
90	existing approved performance measures and standards;	
91	specifying authority of the Legislature relating to agency	
92	and judicial branch performance measures and standards;	
93	amending s. 216.292, F.S.; requiring that notice of	
94	changed conditions necessitating the budget action be	
95	provided to the Executive Office of the Governor and the	
96	legislative appropriations committees when funds are	
97	transferred between categories of appropriations or budget	
98	entities; requiring that such transfers be consistent with	
99	legislative policy and intent; providing that certain	
100	transfers between budget entities are subject to objection	
101	procedures; clarifying provisions authorizing certain	
102	transfers of appropriations from trust funds; providing	
103	that requirements of specified provisions relating to	
104	appropriations being nontransferable do not apply to	
105	legislative branch budgets; amending s. 216.301, F.S.;	
106	revising the requirements for undisbursed balances of	
107	appropriations; revising a procedure for identifying and	
108	paying incurred obligations; removing a provision relating	
109	to notification to retain certain balances from	
110	legislative budget entities; amending s. 252.37, F.S.;	
111	providing that a transfer of moneys with a budget	
112	amendment following a state of emergency is subject to	
113	approval by the Legislative Budget Commission; amending s.	
114	273.02, F.S.; revising a definition; requiring the Chief	
115	Financial Officer to establish certain requirements by	
116	rule relating to the recording and inventory of certain	

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117 state-owned property; creating s. 273.025, F.S.; requiring
 118 the Chief Financial Officer to establish by rule certain
 119 requirements relating to the capitalization of certain
 120 property; amending s. 273.055, F.S.; revising
 121 responsibility for rules relating to maintaining records
 122 as to disposition of state-owned tangible personal
 123 property; revising a provision relating to use of moneys
 124 received from the disposition of state-owned tangible
 125 personal property; amending s. 274.02, F.S.; revising a
 126 definition; requiring the Chief Financial Officer to
 127 establish by rule requirements relating to the recording
 128 and inventory of certain property owned by local
 129 governments; amending s. 338.2216, F.S.; revising
 130 requirements relating to unexpended funds appropriated or
 131 provided for the Florida Turnpike Enterprise; amending s.
 132 1011.57, F.S.; revising requirements relating to
 133 unexpended funds appropriated to the Florida School for
 134 the Deaf and the Blind; repealing s. 215.29, F.S.,
 135 relating to the classification of Chief Financial
 136 Officer's warrants; providing effective dates.

137
 138 Be It Enacted by the Legislature of the State of Florida:
 139

140 Section 1. Subsection (3) of section 11.243, Florida
 141 Statutes, is amended to read:

142 11.243 Publishing Florida Statutes; price, sale.--

143 (3) All moneys collected from the sale of the Florida
 144 Statutes or other publications shall be deposited in the Grants
 145 and Donations Trust Fund within the Legislature ~~State Treasury~~

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146 ~~and credited to the appropriation for legislative expense.~~
 147 Section 2. Subsections (2) and (3) of section 11.513,
 148 Florida Statutes, are amended, present subsections (5) and (6) of
 149 that section are renumbered as subsections (6) and (7),
 150 respectively, and a new subsection (5) is added to that section,
 151 to read:
 152 11.513 Program evaluation and justification review.--
 153 (2) A state agency's inspector general, internal auditor,
 154 or other person designated by the agency head or the Chief
 155 Justice of the Supreme Court shall develop, in consultation with
 156 the Office of Program Policy Analysis and Government
 157 Accountability, a plan for monitoring and reviewing the state
 158 agency's or the judicial branch's major programs to ensure that
 159 performance measures and standards, as well as baseline and
 160 previous-year performance data, are maintained and supported by
 161 agency records.
 162 (3) The program evaluation and justification review shall
 163 be conducted on major programs, but may include other programs.
 164 The review shall be comprehensive in its scope but, at a minimum,
 165 must be conducted in such a manner as to specifically determine
 166 the following, and to consider and determine what changes, if
 167 any, are needed with respect thereto:
 168 (a) The identifiable cost of each program.
 169 (b) The specific purpose of each program, as well as the
 170 specific public benefit derived therefrom.
 171 (c) Progress toward achieving the outputs and outcomes
 172 associated with each program.
 173 (d) An explanation of circumstances contributing to the
 174 state agency's ability to achieve, not achieve, or exceed its

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175 projected outputs and outcomes, as defined in s. 216.011,
176 associated with each program.

177 (e) Alternate courses of action that would result in
178 administration of the same program in a more efficient or
179 effective manner. The courses of action to be considered must
180 include, but are not limited to:

181 1. Whether the program could be organized in a more
182 efficient and effective manner, whether the program's mission,
183 goals, or objectives should be redefined, or, when the state
184 agency cannot demonstrate that its efforts have had a positive
185 effect, whether the program should be reduced in size or
186 eliminated.

187 2. Whether the program could be administered more
188 efficiently or effectively to avoid duplication of activities and
189 ensure that activities are adequately coordinated.

190 3. Whether the program could be performed more efficiently
191 or more effectively by another unit of government or a private
192 entity, or whether a program performed by a private entity could
193 be performed more efficiently and effectively by a state agency.

194 4. When compared to costs, whether effectiveness warrants
195 elimination of the program or, if the program serves a limited
196 interest, whether it should be redesigned to require users to
197 finance program costs.

198 5. Whether the cost to administer the program exceeds
199 license and other fee revenues paid by those being regulated.

200 6. Whether other changes could improve the efficiency and
201 effectiveness of the program.

202 (f) The consequences of discontinuing such program. If any
203 discontinuation is recommended, such recommendation must be

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204 accompanied by a description of alternatives to implement such
205 recommendation, including an implementation schedule for
206 discontinuation and recommended procedures for assisting state
207 agency employees affected by the discontinuation.

208 (g) Determination as to public policy, which may include
209 recommendations as to whether it would be sound public policy to
210 continue or discontinue funding the program, either in whole or
211 in part, in the existing manner.

212 (h) Whether current performance measures and standards
213 should be reviewed or amended to assist agencies' and the
214 judicial branch's efforts in achieving outputs and outcome
215 measures.

216 (i)~~(h)~~ Whether the information reported as part of the
217 state's performance-based program budgeting system has relevance
218 and utility for the evaluation of each program.

219 (j)~~(i)~~ Whether state agency management has established
220 control systems sufficient to ensure that performance data are
221 maintained and supported by state agency records and accurately
222 presented in state agency performance reports.

223 (5) The Office of Program Policy Analysis and Government
224 Accountability may perform evaluation and justification reviews
225 when necessary and as directed by the Legislature in order to
226 determine whether current agency and judicial branch performance
227 measures and standards are adequate. Reports concerning the
228 evaluation and review of agency performance measures and
229 standards shall be submitted to the Executive Office of the
230 Governor, the President of the Senate, the Speaker of the House
231 of Representatives, and the chair and vice chair of the
232 Legislative Budget Commission.

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233 Section 3. Paragraph (h) of subsection (1) of section
234 20.435, Florida Statutes, is amended to read:

235 20.435 Department of Health; trust funds.--

236 (1) The following trust funds are hereby created, to be
237 administered by the Department of Health:

238 (h) Biomedical Research Trust Fund.

239 1. Funds to be credited to the trust fund shall consist of
240 funds deposited pursuant to s. 215.5601. Funds shall be used for
241 the purposes of the James and Esther King Biomedical Research
242 Program as specified in ss. 215.5602 and 288.955. The trust fund
243 is exempt from the service charges imposed by s. 215.20.

244 2. Notwithstanding the provisions of s. 216.301 and
245 pursuant to s. 216.351, any balance in the trust fund at the end
246 of any fiscal year shall remain in the trust fund at the end of
247 the year and shall be available for carrying out the purposes of
248 the trust fund. The department may invest these funds
249 independently through the Chief Financial Officer or may
250 negotiate a trust agreement with the State Board of
251 Administration for the investment management of any balance in
252 the trust fund.

253 3. Notwithstanding s. 216.301 and pursuant to s. 216.351,
254 any balance of any appropriation from the Biomedical Research
255 Trust Fund which is not disbursed but which is obligated pursuant
256 to contract or committed to be expended may be carried forward
257 ~~certified by the Governor~~ for up to 3 years following the
258 effective date of the original appropriation.

259 4. The trust fund shall, unless terminated sooner, be
260 terminated on July 1, 2008.

261 Section 4. Section 215.18, Florida Statutes, is amended to

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262 read:

263 215.18 Transfers between funds; limitation.--Whenever there

264 exists in any fund provided for by s. 215.32 a deficiency which

265 would render such fund insufficient to meet its just

266 requirements, and there shall exist in the other funds in the

267 State Treasury moneys which are for the time being or otherwise

268 in excess of the amounts necessary to meet the just requirements

269 of such last-mentioned funds, the Governor may order a temporary

270 transfer of moneys from one fund to another in order to meet

271 temporary deficiencies in a particular fund without resorting to

272 the necessity of borrowing money and paying interest thereon. Any

273 action proposed under this section is subject to the notice and

274 objection procedures set forth in s. 216.177, and the Governor

275 shall provide notice of such action at least 7 days prior to the

276 effective date of the transfer of funds.

277 (1) Except as otherwise provided in s. 216.222(1)(a)2., the

278 fund from which any money is temporarily transferred shall be

279 repaid the amount transferred from it not later than the end of

280 the fiscal year in which such transfer is made, the date of

281 repayment to be specified in the order of the Governor.

282 (2) Notwithstanding subsection (1) and for the 2005-2006

283 fiscal year only, the repayment period for funds temporarily

284 transferred in fiscal year 2004-2005 to meet deficiencies

285 resulting from hurricanes striking this state in 2004 may be

286 extended until grants awarded by the Federal Emergency Management

287 Agency for FEMA Disaster Declarations 1539-DR-FL, 1545-DR-FL,

288 1551-DR-FL, and 1561-DR-FL are received. This subsection expires

289 July 1, 2006.

290 Section 5. Subsections (2) and (4) of section 215.3206,

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291 Florida Statutes, are amended to read:

292 215.3206 Trust funds; termination or re-creation.--

293 (2) If the trust fund is terminated and not immediately re-
294 created, all cash balances and income of the trust fund shall be
295 deposited into the General Revenue Fund. The agency or Chief
296 Justice shall pay any outstanding debts of the trust fund as soon
297 as practicable, and the Chief Financial Officer shall close out
298 and remove the trust fund from the various state financial
299 ~~accounting~~ systems, using generally accepted accounting practices
300 concerning warrants outstanding, assets, and liabilities. No
301 appropriation or budget amendment shall be construed to authorize
302 any encumbrance of funds from a trust fund after the date on
303 which the trust fund is terminated or is judicially determined to
304 be invalid.

305 (4) For the purposes of this section, the Governor, Chief
306 Justice, and agencies shall review the trust funds as they are
307 identified by a classification scheme set out in the legislative
308 budget request instructions pursuant to s. 216.023 consistent
309 with the Department of Financial Services' financial systems by a
310 ~~unique 6 digit code in the Florida Accounting Information~~
311 ~~Resource Subsystem at a level composed of the 2 digit~~
312 ~~organization level 1, the 1 digit state fund type 2, and the~~
313 ~~first three digits of the fund identifier.~~ The Governor, Chief
314 Justice, and agencies may also conduct their review and make
315 recommendations concerning accounts within such trust funds.

316 Section 6. Subsection (1) and paragraph (a) of subsection
317 (2) of section 215.3208, Florida Statutes, are amended to read:

318 215.3208 Trust funds; legislative review.--

319 (1) In order to implement s. 19(f), Art. III of the State

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320 Constitution, for the purpose of reviewing trust funds prior to
321 their automatic termination pursuant to the provisions of s.
322 19(f)(2), Art. III of the State Constitution, the Legislature
323 shall review all state trust funds at least once every 4 years.
324 The schedule for such review may be included in the legislative
325 budget instructions developed pursuant to the requirements of s.
326 216.023. The Legislature shall review trust funds as they are
327 identified by a classification scheme set out in the legislative
328 budget request instructions pursuant to s. 216.023 consistent
329 with the Department of Financial Services' financial systems by a
330 unique 6-digit code in the Florida Accounting Information
331 Resource Subsystem at a level composed of the 2-digit
332 organization level 1, the 1-digit state fund type 2, and the
333 first three digits of the fund identifier. When a statutorily
334 created trust fund that was in existence on November 4, 1992, has
335 more than one fund 6-digit code in the financial systems, the
336 Legislature may treat it as a single trust fund for the purposes
337 of this section. The Legislature may also conduct its review
338 concerning accounts within such trust funds.

339 (2)(a) When the Legislature terminates a trust fund, the
340 agency or branch of state government that administers the trust
341 fund shall pay any outstanding debts or obligations of the trust
342 fund as soon as practicable, and the Chief Financial Officer
343 shall close out and remove the trust fund from the various state
344 financial accounting systems, using generally accepted accounting
345 principles concerning assets, liabilities, and warrants
346 outstanding.

347 Section 7. Section 215.35, Florida Statutes, is amended to
348 read:

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349 215.35 State funds; warrants and their issuance.--All
350 warrants issued by the Chief Financial Officer shall be numbered
351 in a manner that uniquely identifies each warrant for audit and
352 reconciliation purposes ~~chronological order commencing with~~
353 ~~number one in each fiscal year and each warrant shall refer to~~
354 ~~the Chief Financial Officer's voucher by the number thereof,~~
355 ~~which voucher shall also be numbered as above set forth.~~ Each
356 warrant shall state the name of the payee thereof and the amount
357 allowed, and said warrant shall be stated in words at length. No
358 warrant shall issue until same has been authorized by an
359 appropriation made by law but such warrant need not state or set
360 forth such authorization. The Chief Financial Officer shall
361 register and maintain a record of each warrant in his or her
362 office. The record shall show the funds, accounts, purposes, and
363 departments involved in the issuance of each warrant. In those
364 instances where the expenditure of funds of regulatory boards or
365 commissions has been provided for by laws other than the annual
366 appropriations bill, warrants shall be issued upon requisition to
367 the Chief Financial Officer by the governing body of such board
368 or commission.

369 Section 8. Subsections (1) and (2), paragraphs (a) and (b)
370 of subsection (3), and subsection (6) of section 215.422, Florida
371 Statutes, are amended to read:

372 215.422 Payments, ~~warrants, vouchers,~~ and invoices;
373 processing time limits; dispute resolution; agency or judicial
374 branch compliance.--

375 (1) ~~The voucher authorizing payment of~~ An invoice submitted
376 to an agency of the state or the judicial branch, required by law
377 to be filed with the Chief Financial Officer, shall be recorded

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378 | in the financial systems of the state, approved for payment by
 379 | the agency or the judicial branch, and filed with the Chief
 380 | Financial Officer not later than 20 days after receipt of the
 381 | invoice and receipt, inspection, and approval of the goods or
 382 | services, except that in the case of a bona fide dispute the
 383 | invoice recorded in the financial systems of the state ~~voucher~~
 384 | shall contain a statement of the dispute and authorize payment
 385 | only in the amount not disputed. The Chief Financial Officer may
 386 | establish dollar thresholds and other criteria for all invoices
 387 | and may delegate to a state agency or the judicial branch
 388 | responsibility for maintaining the official invoices ~~vouchers~~ and
 389 | documents for invoices which do not exceed the thresholds or
 390 | which meet the established criteria. Such records shall be
 391 | maintained in accordance with the requirements established by the
 392 | Secretary of State. The transmission of an approved invoice
 393 | recorded in the financial systems of the state ~~electronic payment~~
 394 | ~~request transmission~~ to the Chief Financial Officer shall
 395 | constitute filing of a request ~~voucher~~ for payment of invoices
 396 | for which the Chief Financial Officer has delegated to an agency
 397 | custody of official records. Approval and inspection of goods or
 398 | services shall take no longer than 5 working days unless the bid
 399 | specifications, purchase order, or contract specifies otherwise.
 400 | If an invoice ~~a voucher~~ filed within the 20-day period is
 401 | returned by the Department of Financial Services because of an
 402 | error, it shall nevertheless be deemed timely filed. The 20-day
 403 | filing requirement may be waived in whole or in part by the
 404 | Department of Financial Services on a showing of exceptional
 405 | circumstances in accordance with rules and regulations of the
 406 | department. For the purposes of determining the receipt of

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407 | invoice date, the agency or the judicial branch is deemed to
408 | receive an invoice on the date on which a proper invoice is first
409 | received at the place designated by the agency or the judicial
410 | branch. The agency or the judicial branch is deemed to receive an
411 | invoice on the date of the invoice if the agency or the judicial
412 | branch has failed to annotate the invoice with the date of
413 | receipt at the time the agency or the judicial branch actually
414 | received the invoice or failed at the time the order is placed or
415 | contract made to designate a specific location to which the
416 | invoice must be delivered.

417 | (2) The Department of Financial Services shall approve
418 | payment of an invoice no later than 10 days after the agency's
419 | filing of the approved invoice ~~The warrant in payment of an~~
420 | ~~invoice submitted to an agency of the state or the judicial~~
421 | ~~branch shall be issued not later than 10 days after filing of the~~
422 | ~~voucher authorizing payment.~~ However, this requirement may be
423 | waived in whole or in part by the Department of Financial
424 | Services on a showing of exceptional circumstances in accordance
425 | with rules and regulations of the department. If the 10-day
426 | period contains fewer than 6 working days, the Department of
427 | Financial Services shall be deemed in compliance with this
428 | subsection if the payment is approved ~~warrant is issued~~ within 6
429 | working days without regard to the actual number of calendar
430 | days. ~~For purposes of this section, a payment is deemed to be~~
431 | ~~issued on the first working day that payment is available for~~
432 | ~~delivery or mailing to the vendor.~~

433 | (3)(a) Each agency of the state or the judicial branch
434 | which is required by law to file invoices ~~vouchers~~ with the Chief
435 | Financial Officer shall keep a record of the date of receipt of

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436 the invoice; dates of receipt, inspection, and approval of the
437 goods or services; date of filing of the approved invoice
438 ~~voucher~~; and date of issuance of the warrant in payment thereof.
439 If the invoice ~~voucher~~ is not filed or the warrant is not issued
440 within the time required, an explanation in writing by the agency
441 head or the Chief Justice shall be submitted to the Department of
442 Financial Services in a manner prescribed by it. Agencies and the
443 judicial branch shall continue to deliver or mail state payments
444 promptly.

445 (b) If a warrant in payment of an invoice is not issued
446 within 40 days after receipt of the invoice and receipt,
447 inspection, and approval of the goods and services, the agency or
448 judicial branch shall pay to the vendor, in addition to the
449 amount of the invoice, interest at a rate as established pursuant
450 to s. 55.03(1) on the unpaid balance from the expiration of such
451 40-day period until such time as the warrant is issued to the
452 vendor. Such interest shall be added to the invoice at the time
453 of submission to the Chief Financial Officer for payment whenever
454 possible. If addition of the interest penalty is not possible,
455 the agency or judicial branch shall pay the interest penalty
456 payment within 15 days after issuing the warrant. The provisions
457 of this paragraph apply only to undisputed amounts for which
458 payment has been authorized. Disputes shall be resolved in
459 accordance with rules developed and adopted by the Chief Justice
460 for the judicial branch, and rules adopted by the Department of
461 Financial Services or in a formal administrative proceeding
462 before an administrative law judge of the Division of
463 Administrative Hearings for state agencies, provided that, for
464 the purposes of ss. 120.569 and 120.57(1), no party to a dispute

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465 involving less than \$1,000 in interest penalties shall be deemed
 466 to be substantially affected by the dispute or to have a
 467 substantial interest in the decision resolving the dispute. In
 468 the case of an error on the part of the vendor, the 40-day period
 469 shall begin to run upon receipt by the agency or the judicial
 470 branch of a corrected invoice or other remedy of the error. For
 471 purposes of this section, the non-submittal of the appropriate
 472 federal taxpayer identification documentation to the Department
 473 of Financial Services by the vendor will be deemed an error on
 474 the part of the vendor and the vendor will be required to submit
 475 the appropriate federal taxpayer documentation in order to remedy
 476 the error. The provisions of this paragraph do not apply when the
 477 filing requirement under subsection (1) or subsection (2) has
 478 been waived in whole by the Department of Financial Services. The
 479 various state agencies and the judicial branch shall be
 480 responsible for initiating the penalty payments required by this
 481 subsection and shall use this subsection as authority to make
 482 such payments. The budget request submitted to the Legislature
 483 shall specifically disclose the amount of any interest paid by
 484 any agency or the judicial branch pursuant to this subsection.
 485 The temporary unavailability of funds to make a timely payment
 486 due for goods or services does not relieve an agency or the
 487 judicial branch from the obligation to pay interest penalties
 488 under this section.

489 (6) The Department of Financial Services shall monitor each
 490 agency's and the judicial branch's compliance with the time
 491 limits and interest penalty provisions of this section. The
 492 department shall provide a report to an agency or to the judicial
 493 branch if the department determines that the agency or the

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494 judicial branch has failed to maintain an acceptable rate of
 495 compliance with the time limits and interest penalty provisions
 496 of this section. The department shall establish criteria for
 497 determining acceptable rates of compliance. The report shall also
 498 include a list of late invoices ~~vouchers~~ or payments, the amount
 499 of interest owed or paid, and any corrective actions recommended.
 500 The department shall perform monitoring responsibilities,
 501 pursuant to this section, using the Department of Financial
 502 Services' financial systems ~~Management Services and Purchasing~~
 503 ~~Subsystem or the Florida Accounting Information Resource~~
 504 ~~Subsystem~~ provided in s. 215.94. Each agency and the judicial
 505 branch shall be responsible for the accuracy of information
 506 entered into the Department of Management Services' procurement
 507 system ~~Management Services and Purchasing Subsystem~~ and the
 508 Department of Financial Services' financial systems ~~Florida~~
 509 ~~Accounting Information Resource Subsystem~~ for use in this
 510 monitoring.

511 Section 9. Paragraph (d) of subsection (1) of section
 512 215.97, Florida Statutes, is amended to read:

513 215.97 Florida Single Audit Act.--

514 (1) The purposes of the section are to:

515 (d) Provide for identification of state financial
 516 assistance transactions in the ~~appropriations act~~, state
 517 accounting records, and recipient organization records.

518 Section 10. Effective upon this act becoming a law,
 519 paragraph (bb) of subsection (1) of section 216.011, Florida
 520 Statutes, is amended, and paragraphs (tt) and (uu) are added to
 521 that subsection, to read:

522 216.011 Definitions.--

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(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, each of the following terms has the meaning indicated:

(bb) "Operating capital outlay" means the appropriation category used to fund equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature under s. 273.025, according to the value or cost specified in s. 273.02.

(tt) "Incurring obligation" means a legal obligation for goods or services that have been contracted for, referred to as an encumbrance in the state's financial system, or received or incurred by the state and referred to as a payable in the state's financial system.

(uu) "Salary rate reserve" means the withholding of a portion of the annual salary rate for a specific purpose.

Section 11. Paragraphs (h) through (k) are added to subsection (1) of section 216.013, Florida Statutes, and subsection (5) of that section is amended, to read:

216.013 Long-range program plan.--State agencies and the judicial branch shall develop long-range program plans to achieve state goals using an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

(1) Long-range program plans shall provide the framework for the development of budget requests and shall identify or update:

(h) Legislatively approved output and outcome performance

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552 measures.

553 (i) Performance standards for each performance measure and
554 justification for the standards and the sources of data to be
555 used for measurement.

556 (j) Prior-year performance data on approved performance
557 measures and an explanation of deviation from expected
558 performance. Performance data must be assessed for reliability in
559 accordance with s. 20.055.

560 (k) Proposed performance incentives and disincentives.

561 ~~(5) Following the adoption of the annual General~~
562 ~~Appropriations Act,~~ The state agencies and the judicial branch
563 shall make appropriate adjustments to their long-range program
564 plans, excluding adjustments to performance measures and
565 standards, to be consistent with the appropriations ~~and~~
566 ~~performance measures~~ in the General Appropriations Act and
567 legislation implementing the General Appropriations Act. Agencies
568 and the judicial branch have 30 days subsequent to the effective
569 date of the General Appropriations Act and implementing
570 legislation until June 30 to make adjustments to their plans as
571 posted on their Internet websites.

572 Section 12. Paragraph (a) of subsection (4) and subsections
573 (5), (6), and (8) of section 216.023, Florida Statutes, are
574 amended, and subsections (7), (9), (10), (11), and (12) are
575 renumbered as subsections (5), (6), (7), (8), and (9),
576 respectively, to read:

577 216.023 Legislative budget requests to be furnished to
578 Legislature by agencies.--

579 (4)(a) The legislative budget request must contain for each
580 program:

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- 581 1. The constitutional or statutory authority for a program,
582 a brief purpose statement, and approved program components.
- 583 2. Information on expenditures for 3 fiscal years (actual
584 prior-year expenditures, current-year estimated expenditures, and
585 agency budget requested expenditures for the next fiscal year) by
586 appropriation category.
- 587 3. Details on trust funds and fees.
- 588 4. The total number of positions (authorized, fixed, and
589 requested).
- 590 5. An issue narrative describing and justifying changes in
591 amounts and positions requested for current and proposed programs
592 for the next fiscal year.
- 593 6. Information resource requests.
- 594 ~~7. Legislatively approved Output and outcome performance~~
595 ~~measures and any proposed revisions to measures.~~
- 596 ~~8. Proposed performance standards for each performance~~
597 ~~measure and justification for the standards and the sources of~~
598 ~~data to be used for measurement.~~
- 599 ~~9. Prior year performance data on approved performance~~
600 ~~measures and an explanation of deviation from expected~~
601 ~~performance. Performance data must be assessed for reliability in~~
602 ~~accordance with s. 20.055.~~
- 603 ~~10. Proposed performance incentives and disincentives.~~
- 604 7.11. Supporting information, including applicable cost-
605 benefit analyses, business case analyses, performance contracting
606 procedures, service comparisons, and impacts on performance
607 standards for any request to outsource or privatize agency
608 functions.
- 609 8.12. An evaluation of any major outsourcing and

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610 privatization initiatives undertaken during the last 5 fiscal
611 years having aggregate expenditures exceeding \$10 million during
612 the term of the contract. The evaluation shall include an
613 assessment of contractor performance, a comparison of anticipated
614 service levels to actual service levels, and a comparison of
615 estimated savings to actual savings achieved. Consolidated
616 reports issued by the Department of Management Services may be
617 used to satisfy this requirement.

618 ~~(5) Agencies must maintain a comprehensive performance~~
619 ~~accountability system and provide a list of performance measures~~
620 ~~maintained by the agency which are in addition to the measures~~
621 ~~approved by the Legislature.~~

622 ~~(6) Annually, by June 30, executive agencies shall submit~~
623 ~~to the Executive Office of the Governor adjustments to their~~
624 ~~performance standards based on the amounts appropriated for each~~
625 ~~program by the Legislature. When such an adjustment is made, all~~
626 ~~performance standards, including any adjustments made, shall be~~
627 ~~reviewed and revised as necessary by the Executive Office of the~~
628 ~~Governor and, upon approval, submitted to the Legislature~~
629 ~~pursuant to the review and approval process provided in s.~~
630 ~~216.177. The Senate and the House of Representatives~~
631 ~~appropriations committees shall advise Senate substantive~~
632 ~~committees and House of Representatives substantive committees,~~
633 ~~respectively, of all adjustments made to performance standards or~~
634 ~~measures. The Executive Office of the Governor shall maintain the~~
635 ~~official record of adjustments to the performance standards. As~~
636 ~~used in this section, the term "official record" means the~~
637 ~~official compilation of information about state agency~~
638 ~~performance based programs and measures, including approved~~

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639 ~~programs, approved outputs and outcomes, baseline data, approved~~
640 ~~standards for each performance measure and any approved~~
641 ~~adjustments thereto, as well as actual agency performance for~~
642 ~~each measure.~~

643 ~~(8) Annually, by June 30, the judicial branch shall make~~
644 ~~adjustments to any performance standards for approved programs~~
645 ~~based on the amount appropriated for each program, which shall be~~
646 ~~submitted to the Legislature pursuant to the notice and review~~
647 ~~process provided in s. 216.177. The Senate and the House of~~
648 ~~Representatives appropriations committees shall advise Senate~~
649 ~~substantive committees and House substantive committees,~~
650 ~~respectively, of all adjustments made to performance standards or~~
651 ~~measures.~~

652 Section 13. Paragraph (a) of subsection (4) of section
653 216.134, Florida Statutes, is amended to read:

654 216.134 Consensus estimating conferences; general
655 provisions.--

656 (4) Consensus estimating conferences are within the
657 legislative branch. The membership of each consensus estimating
658 conference consists of principals and participants.

659 (a) A person designated by law as a principal may preside
660 over conference sessions, convene conference sessions, request
661 information, specify topics to be included on the conference
662 agenda, agree or withhold agreement on whether information is to
663 be official information of the conference, release official
664 information of the conference, interpret official information of
665 the conference, and monitor errors in official information of the
666 conference. The responsibility of presiding over sessions of the
667 conference shall be rotated among the principals.

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668 Section 14. Paragraph (b) of subsection (1), paragraph (b)
669 of subsection (2), paragraph (b) of subsection (3), paragraph (c)
670 of subsection (4), subsections (5) through (7), paragraph (b) of
671 subsection (8), paragraph (b) of subsection (9), and paragraph
672 (b) of subsection (10) of section 216.136, Florida Statutes, are
673 amended to read:

674 216.136 Consensus estimating conferences; duties and
675 principals.--

676 (1) ECONOMIC ESTIMATING CONFERENCE.--

677 (b) Principals.--The Executive Office of the Governor, the
678 coordinator of the Office of Economic and Demographic Research,
679 and professional staff of the Senate and House of Representatives
680 who have forecasting expertise, or their designees, are the
681 principals of the Economic Estimating Conference. ~~The~~
682 ~~responsibility of presiding over sessions of the conference shall~~
683 ~~be rotated among the principals.~~

684 (2) DEMOGRAPHIC ESTIMATING CONFERENCE.--

685 (b) Principals.--The Executive Office of the Governor, the
686 coordinator of the Office of Economic and Demographic Research,
687 and professional staff of the Senate and House of Representatives
688 who have forecasting expertise, or their designees, are the
689 principals of the Demographic Estimating Conference. ~~The~~
690 ~~responsibility of presiding over sessions of the conference shall~~
691 ~~be rotated among the principals.~~

692 (3) REVENUE ESTIMATING CONFERENCE.--

693 (b) Principals.--The Executive Office of the Governor, the
694 coordinator of the Office of Economic and Demographic Research,
695 and professional staff of the Senate and House of Representatives
696 who have forecasting expertise, or their designees, are the

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697 principals of the Revenue Estimating Conference. The
698 ~~responsibility of presiding over sessions of the conference shall~~
699 ~~be rotated among the principals.~~

700 (4) EDUCATION ESTIMATING CONFERENCE.--

701 (c) Principals.--~~The Commissioner of Education, the~~
702 Executive Office of the Governor, the coordinator of the Office
703 of Economic and Demographic Research, and professional staff of
704 the Senate and House of Representatives who have forecasting
705 expertise, or their designees, are the principals of the
706 Education Estimating Conference. ~~The Commissioner of Education or~~
707 ~~his or her designee shall preside over sessions of the~~
708 ~~conference.~~

709 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.--

710 (a) Duties.--The Criminal Justice Estimating Conference
711 shall:

712 1. Develop such official information relating to the
713 criminal justice system, including forecasts of prison admissions
714 and population and of supervised felony offender admissions and
715 population, as the conference determines is needed for the state
716 planning and budgeting system.

717 2. Develop such official information relating to the number
718 of eligible discharges and the projected number of civil
719 commitments for determining space needs pursuant to the civil
720 proceedings provided under part V of chapter 394.

721 3. Develop official information relating to the number of
722 sexual offenders and sexual predators who are required by law to
723 be placed on community control, probation, or conditional release
724 who are subject to electronic monitoring. ~~In addition, the Office~~
725 ~~of Economic and Demographic Research shall study the factors~~

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726 ~~relating to the sentencing of sex offenders from the point of~~
 727 ~~arrest through the imposition of sanctions by the sentencing~~
 728 ~~court, including original charges, plea negotiations, trial~~
 729 ~~dispositions, and sanctions. The Department of Corrections, the~~
 730 ~~Office of the State Courts Administrator, the Florida Department~~
 731 ~~of Law Enforcement, and the state attorneys shall provide~~
 732 ~~information deemed necessary for the study. The final report~~
 733 ~~shall be provided to the President of the Senate and the Speaker~~
 734 ~~of the House of Representatives by March 1, 2006.~~

735 (b) Principals.--The Executive Office of the Governor, the
 736 coordinator of the Office of Economic and Demographic Research,
 737 and professional staff of, ~~who have forecasting expertise, from~~
 738 the Senate and, ~~the~~ House of Representatives who have forecasting
 739 expertise, ~~and the Supreme Court, or their designees, are the~~
 740 principals of the Criminal Justice Estimating Conference. The
 741 ~~principal representing the Executive Office of the Governor shall~~
 742 ~~preside over sessions of the conference.~~

743 (6) SOCIAL SERVICES ESTIMATING CONFERENCE.--

744 (a) Duties.--

745 1. The Social Services Estimating Conference shall develop
 746 such official information relating to the social services system
 747 of the state, including forecasts of social services caseloads,
 748 utilization, and expenditures, as the conference determines is
 749 needed for the state planning and budgeting system. Such official
 750 information shall include, but not be limited to, cash assistance
 751 and Medicaid caseloads.

752 2. The Social Services Estimating Conference shall develop
 753 information relating to the Florida Kidcare program, including,
 754 but not limited to, outreach impacts, enrollment, caseload,

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755 utilization, and expenditure information that the conference
756 determines is needed to plan for and project future budgets and
757 the drawdown of federal matching funds. ~~The agencies required to~~
758 ~~collect and analyze Florida Kidcare program data under s.~~
759 ~~409.8134 shall be participants in the Social Services Estimating~~
760 ~~Conference for purposes of developing information relating to the~~
761 ~~Florida Kidcare program.~~

762 (b) Principals.--The Executive Office of the Governor, the
763 coordinator of the Office of Economic and Demographic Research,
764 and professional staff of ~~who have forecasting expertise from the~~
765 ~~Department of Children and Family Services, the Agency for Health~~
766 ~~Care Administration, the Senate, and the House of Representatives~~
767 who have forecasting expertise, or their designees, are the
768 principals of the Social Services Estimating Conference. ~~The~~
769 ~~principal representing the Executive Office of the Governor shall~~
770 ~~preside over sessions of the conference.~~

771 (7) WORKFORCE ESTIMATING CONFERENCE.--

772 (a) Duties.--

773 1. The Workforce Estimating Conference shall develop such
774 official information on the workforce development system planning
775 process as it relates to the personnel needs of current, new, and
776 emerging industries as the conference determines is needed by the
777 state planning and budgeting system. Such information, using
778 quantitative and qualitative research methods, must include at
779 least: short-term and long-term forecasts of employment demand
780 for jobs by occupation and industry; entry and average wage
781 forecasts among those occupations; and estimates of the supply of
782 trained and qualified individuals available or potentially
783 available for employment in those occupations, with special focus

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784 upon those occupations and industries which require high skills
785 and have high entry wages and experienced wage levels. In the
786 development of workforce estimates, the conference shall use, to
787 the fullest extent possible, local occupational and workforce
788 forecasts and estimates.

789 2. The Workforce Estimating Conference shall review data
790 concerning the local and regional demands for short-term and
791 long-term employment in High-Skills/High-Wage Program jobs, as
792 well as other jobs, which data is generated through surveys
793 conducted as part of the state's Internet-based job matching and
794 labor market information system authorized under s. 445.011. The
795 conference shall consider such data in developing its forecasts
796 for statewide employment demand, including reviewing the local
797 and regional data for common trends and conditions among
798 localities or regions which may warrant inclusion of a particular
799 occupation on the statewide occupational forecasting list
800 developed by the conference. Based upon its review of such survey
801 data, the conference shall also make recommendations semiannually
802 to Workforce Florida, Inc., on additions or deletions to lists of
803 locally targeted occupations approved by Workforce Florida, Inc.

804 ~~3. During each legislative session, and at other times if~~
805 ~~necessary, the Workforce Estimating Conference shall meet as the~~
806 ~~Workforce Impact Conference for the purpose of determining the~~
807 ~~effects of legislation related to the state's workforce and~~
808 ~~economic development efforts introduced prior to and during such~~
809 ~~legislative session. In addition to the designated principals of~~
810 ~~the impact conference, nonprincipal participants of the impact~~
811 ~~conference shall include a representative of the Florida Chamber~~
812 ~~of Commerce and other interested parties. The impact conference~~

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813 ~~shall use both quantitative and qualitative research methods to~~
814 ~~determine the impact of introduced legislation related to~~
815 ~~workforce and economic development issues.~~

816 3.4. ~~Notwithstanding subparagraph 3.,~~ The Workforce
817 Estimating Conference, for the purposes described in subparagraph
818 1., shall meet no less than 2 times in a calendar year. The first
819 meeting shall be held in February, and the second meeting shall
820 be held in August. Other meetings may be scheduled as needed.

821 (b) Principals.--~~The Commissioner of Education, the~~
822 ~~Executive Office of the Governor, the director of the Office of~~
823 ~~Tourism, Trade, and Economic Development, the director of the~~
824 ~~Agency for Workforce Innovation, the executive director of the~~
825 ~~Commission for Independent Education, the Chancellor of the State~~
826 ~~University System, the chair of Workforce Florida, Inc., the~~
827 coordinator of the Office of Economic and Demographic Research,
828 ~~or their designees,~~ and professional staff of ~~from~~ the Senate and
829 the House of Representatives who have forecasting and substantive
830 expertise, or their designees, are the principals of the
831 Workforce Estimating Conference. ~~In addition to the designated~~
832 ~~principals of the conference, nonprincipal participants of the~~
833 ~~conference shall include a representative of the Florida Chamber~~
834 ~~of Commerce and other interested parties. The principal~~
835 ~~representing the Executive Office of the Governor shall preside~~
836 ~~over the sessions of the conference.~~

837 (8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.--

838 (b) Principals.--The Executive Office of the Governor, the
839 coordinator ~~Director~~ of the Office of Economic and Demographic
840 Research, and professional staff of ~~who have forecasting~~
841 ~~expertise from the Agency for Workforce Innovation, the~~

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842 ~~Department of Children and Family Services, the Department of~~
843 ~~Education, the Senate, and the House of Representatives who have~~
844 ~~forecasting expertise, or their designees, are the principals of~~
845 ~~the Early Learning Programs Estimating Conference. The principal~~
846 ~~representing the Executive Office of the Governor shall preside~~
847 ~~over sessions of the conference.~~

848 (9) SELF-INSURANCE ESTIMATING CONFERENCE.--

849 (b) Principals.--The Executive Office of the Governor, the
850 coordinator of the Office of Economic and Demographic Research,
851 and professional staff of the Senate and the House of
852 Representatives who have forecasting expertise and ~~substantive~~
853 ~~experience~~, or their designees, are the principals of the Self-
854 Insurance Estimating Conference. ~~The responsibility of presiding~~
855 ~~over sessions of the conference shall be rotated among the~~
856 ~~principals.~~

857 (10) FLORIDA RETIREMENT SYSTEM ACTUARIAL ASSUMPTION
858 CONFERENCE.--

859 (b) Principals.--The Executive Office of the Governor, the
860 coordinator of the Office of Economic and Demographic Research,
861 and professional staff of the Senate and House of Representatives
862 who have forecasting and ~~substantive~~ expertise, or their
863 designees, are the principals of the Florida Retirement System
864 Actuarial Assumption Conference. ~~The Executive Office of the~~
865 ~~Governor shall have the responsibility of presiding over the~~
866 ~~sessions of the conference. The State Board of Administration and~~
867 ~~the Division of Retirement shall be participants in the~~
868 ~~conference.~~

869 Section 15. Paragraph (a) of subsection (2) of section
870 216.177, Florida Statutes, is amended to read:

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871 216.177 Appropriations acts, statement of intent,
872 violation, notice, review and objection procedures.--

873 (2)(a) Whenever notice of action to be taken by the
874 Executive Office of the Governor or the Chief Justice of the
875 Supreme Court is required by law ~~this chapter~~, such notice shall
876 be given to the chair and vice chair of the Legislative Budget
877 Commission in writing, and shall be delivered at least 14 days
878 prior to the action referred to, unless a shorter period is
879 approved in writing by the chair and vice chair or a different
880 period is specified by law. If the action is solely for the
881 release of funds appropriated by the Legislature, the notice
882 shall be delivered at least 3 days before the effective date of
883 the action. Action shall not be taken on any budget item for
884 which this chapter requires notice to the Legislative Budget
885 Commission or the appropriations committees without such notice
886 having been provided, even though there may be good cause for
887 considering such item.

888 Section 16. Subsection (2) of section 216.178, Florida
889 Statutes, is amended to read:

890 216.178 General Appropriations Act; format; procedure.--

891 (2) The Office of Planning and Budgeting shall develop a
892 final budget report that reflects the net appropriations for each
893 budget item. The report shall reflect actual expenditures for
894 each of the 2 preceding fiscal years and the estimated
895 expenditures for the current fiscal year. In addition, the report
896 must contain the actual revenues and cash balances for the
897 preceding 2 fiscal years and the estimated revenues and cash
898 balances for the current fiscal year. The report may also contain
899 expenditure data, program objectives, and program measures for

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900 each state agency program. The report must be produced by October
 901 30 ~~15~~ each year. A copy of the report must be made available to
 902 each member of the Legislature, to the head of each state agency,
 903 to the Auditor General, to the director of the Office of Program
 904 Policy Analysis and Government Accountability, and to the public.

905 Section 17. Subsections (3), (5), (6), and (11) of section
 906 216.181, Florida Statutes, are amended to read:

907 216.181 Approved budgets for operations and fixed capital
 908 outlay.--

909 (3) All amendments to original approved operating budgets,
 910 regardless of funding source, are subject to the notice and
 911 objection review ~~review~~ procedures set forth in s. 216.177.

912 (5) An amendment to the original operating budget for an
 913 information technology project or initiative that involves more
 914 than one agency, has an outcome that impacts another agency, or
 915 exceeds \$500,000 in total cost over a 1-year period, except for
 916 those projects that are a continuation of hardware or software
 917 maintenance or software licensing agreements, or that are for
 918 desktop replacement that is similar to the technology currently
 919 in use must be reviewed by the Technology Review Workgroup
 920 pursuant to s. 216.0446 and approved by the Executive Office of
 921 the Governor for the executive branch or by the Chief Justice for
 922 the judicial branch, and shall be subject to the notice and
 923 objection review ~~review~~ procedures set forth in s. 216.177.

924 (6)(a) A detailed plan allocating a lump-sum appropriation
 925 to traditional appropriations categories shall be submitted by
 926 the affected agency to the Executive Office of the Governor or
 927 the Chief Justice of the Supreme Court. The Executive Office of
 928 the Governor and the Chief Justice of the Supreme Court shall

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929 submit such plan to the chair and vice chair of the Legislative
 930 Budget Commission either before or concurrent with the submission
 931 of any budget amendment that recommends the transfer and release
 932 of ~~may require the submission of a detailed plan from the agency~~
 933 ~~or entity of the judicial branch affected, consistent with the~~
 934 ~~General Appropriations Act, special appropriations acts, and~~
 935 ~~statements of intent before transferring and releasing the~~
 936 balance of a lump-sum appropriation.

937 (b) The Executive Office of the Governor and the Chief
 938 Justice of the Supreme Court may amend, without approval of the
 939 Legislative Budget Commission, state agency and judicial branch
 940 entity budgets, respectively, to reflect the transferred funds
 941 and to provide the associated increased salary rate based on the
 942 approved plans for lump-sum appropriations. Any action proposed
 943 pursuant to this paragraph is subject to the procedures set forth
 944 in s. 216.177.

945
 946 The Executive Office of the Governor shall transmit to each state
 947 agency and the Chief Financial Officer, and the Chief Justice
 948 shall transmit to each judicial branch component and the Chief
 949 Financial Officer, any approved amendments to the approved
 950 operating budgets.

951 (8) As part of the approved operating budget, the Executive
 952 Office of the Governor shall furnish to each state agency, and
 953 the Chief Justice of the Supreme Court shall furnish to the
 954 entity of the judicial branch, an approved annual salary rate for
 955 each budget entity containing a salary appropriation. This rate
 956 shall be based upon the actual salary rate and shall be

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957 | consistent with the General Appropriations Act or special
 958 | appropriations acts. The annual salary rate shall be:
 959 | (a) Determined by the salary rate specified in the General
 960 | Appropriations Act and adjusted for reorganizations authorized by
 961 | law, for any other appropriations made by law, and, subject to s.
 962 | 216.177, for distributions of lump-sum appropriations and
 963 | administered funds and for actions that require authorization of
 964 | salary rate from salary rate reserve and placement of salary rate
 965 | in salary rate reserve.
 966 | (10) (a) The Legislative Budget Commission may authorize
 967 | increases or decreases in the approved salary rate, except as
 968 | authorized in s. 216.181(8) (a), for positions pursuant to the
 969 | request of the agency filed with the Executive Office of the
 970 | Governor or pursuant to the request of an entity of the judicial
 971 | branch filed with the Chief Justice of the Supreme Court, if
 972 | deemed necessary and in the best interest of the state and
 973 | consistent with legislative policy and intent.
 974 | (11) The Executive Office of the Governor and the Chief
 975 | Justice of the Supreme Court may approve changes in the amounts
 976 | appropriated from state trust funds in excess of those in the
 977 | approved operating budget up to \$1 million only pursuant to the
 978 | federal funds provisions of s. 216.212, when grants and donations
 979 | are received after April 1, or when deemed necessary due to a set
 980 | of conditions that were unforeseen at the time the General
 981 | Appropriations Act was adopted and that are essential to correct
 982 | in order to continue the operation of government. Changes in the
 983 | amounts appropriated from state trust funds in excess of those in
 984 | the approved operating budget which are in excess of \$1 million
 985 | may be approved only by the Legislative Budget Commission

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986 pursuant to the request of a state agency filed with the
 987 Executive Office of the Governor or pursuant to the request of an
 988 entity of the judicial branch filed with the Chief Justice of the
 989 Supreme Court. The provisions of this subsection are subject to
 990 the notice, ~~review~~, and objection procedures set forth in s.
 991 216.177.

992 Section 18. Section 216.1811, Florida Statutes, is created
 993 to read:

994 216.1811 Approved operating budgets and appropriations for
 995 the legislative branch.--

996 (1) The Governor and the Chief Financial Officer shall each
 997 make changes to the original approved operating budgets for
 998 operational and fixed capital expenditures relating to the
 999 legislative branch as directed by the presiding officers of the
 1000 legislative branch.

1001 (2) The Governor and the Chief Financial Officer shall each
 1002 ensure that any balances of appropriations made to the
 1003 legislative branch are carried forward as directed by the
 1004 presiding officers of the legislative branch.

1005 Section 19. Paragraph (e) of subsection (2) of section
 1006 216.1815, Florida Statutes, is amended to read:

1007 216.1815 Agency incentive and savings program.--

1008 (2) To be eligible to retain funds, an agency or the Chief
 1009 Justice of the Supreme Court must submit a plan and an associated
 1010 request to amend its approved operating budget to the Legislative
 1011 Budget Commission specifying:

1012 (e) How the agency or the judicial branch will meet
 1013 performance standards, including established by the Legislature
 1014 ~~and~~ those in its long-range program plan; and

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1015 Section 20. Section 216.1827, Florida Statutes, is created
1016 to read:

1017 216.1827 Requirements for performance measures and
1018 standards.--

1019 (1) Agencies and the judicial branch shall maintain a
1020 comprehensive performance accountability system containing, at a
1021 minimum, a list of performance measures and standards that are
1022 adopted by the Legislature and subsequently amended pursuant to
1023 this section.

1024 (2) (a) Agencies and the judicial branch shall submit output
1025 and outcome measures and standards, as well as historical
1026 baseline and performance data, to the Executive Office of the
1027 Governor and the Legislature, under s. 216.013.

1028 (b) Agencies and the judicial branch shall also submit
1029 performance data, measures, and standards to the Office of
1030 Program Policy Analysis and Government Accountability upon
1031 request for review of the adequacy of the legislatively approved
1032 measures and standards.

1033 (3) (a) An agency may submit requests to delete or amend its
1034 existing approved performance measures and standards or submit
1035 requests to create additional performance measures and standards
1036 to the Executive Office of the Governor for review and approval.
1037 The request shall document the justification for the change and
1038 ensure that the revision, deletion, or addition is consistent
1039 with legislative intent. Revisions or deletions to, or additions
1040 of performance measures and standards approved by the Executive
1041 Office of the Governor are subject to the review and objection
1042 procedure set forth in s. 216.177.

1043 (b) The Chief Justice of the Supreme Court may submit

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1044 deletions or amendments of the judicial branch's existing
 1045 approved performance measures and standards or may submit
 1046 additional performance measures and standards to the Executive
 1047 Office of the Governor accompanied with justification for the
 1048 change and ensure that the revision, deletion, or addition is
 1049 consistent with legislative intent. Revisions or deletions to, or
 1050 additions of performance measures and standards submitted by the
 1051 Chief Justice of the Supreme Court are subject to the review and
 1052 objection procedure set forth in s. 216.177.

1053 (4) (a) The Legislature may create, amend and delete
 1054 performance measures and standards. The Legislature may confer
 1055 with the Executive Office of the Governor for state agencies and
 1056 the Chief Justice of the Supreme Court for the judicial branch
 1057 prior to any such action.

1058 (b) The Legislature may require state agencies to submit
 1059 requests for revisions, additions, or deletions to approved
 1060 performance measures and standards to the Executive Office of the
 1061 Governor for review and approval, subject to the review and
 1062 objection procedure set forth in s. 216.177.

1063 (c) The Legislature may require the judicial branch to
 1064 submit revisions, additions, or deletions to approved performance
 1065 measures and standards to the Executive Office of The Governor,
 1066 subject to the review and objection procedure set forth in s.
 1067 216.177.

1068 (d) Any new agency created by the Legislature is subject to
 1069 the initial performance measures and standards established by the
 1070 Legislature. The Legislature may require state agencies and the
 1071 judicial branch to provide any information necessary to create
 1072 initial performance measures and standards.

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1073 Section 21. Paragraph (a) of subsection (2), subsection
1074 (3), paragraph (b) of subsection (4), and subsection (5) of
1075 section 216.292, Florida Statutes, are amended, and subsection
1076 (7) is added to that section, to read:
1077 216.292 Appropriations nontransferable; exceptions.--
1078 (2) The following transfers are authorized to be made by
1079 the head of each department or the Chief Justice of the Supreme
1080 Court whenever it is deemed necessary by reason of changed
1081 conditions:
1082 (a) The transfer of appropriations funded from identical
1083 funding sources, except appropriations for fixed capital outlay,
1084 and the transfer of amounts included within the total original
1085 approved budget and plans of releases of appropriations as
1086 furnished pursuant to ss. 216.181 and 216.192, as follows:
1087 1. Between categories of appropriations within a budget
1088 entity, if no category of appropriation is increased or decreased
1089 by more than 5 percent of the original approved budget or
1090 \$250,000, whichever is greater, by all action taken under this
1091 subsection.
1092 2. Between budget entities within identical categories of
1093 appropriations, if no category of appropriation is increased or
1094 decreased by more than 5 percent of the original approved budget
1095 or \$250,000, whichever is greater, by all action taken under this
1096 subsection.
1097 3. Any agency exceeding salary rate established pursuant to
1098 s. 216.181(8) on June 30th of any fiscal year shall not be
1099 authorized to make transfers pursuant to subparagraphs 1. and 2.
1100 in the subsequent fiscal year.
1101 4. Notice of proposed transfers under subparagraphs 1. and

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1102 2. and notice of the specific changed conditions necessitating
 1103 the action shall be provided to the Executive Office of the
 1104 Governor and the chairs of the legislative appropriations
 1105 committees at least 3 working days prior to agency implementation
 1106 in order to provide an opportunity for review and objection. Such
 1107 transfers must be consistent with legislative policy and intent
 1108 and may not adversely affect achievement of approved performance
 1109 outcomes or outputs in any program. ~~The review shall be limited~~
 1110 ~~to ensuring that the transfer is in compliance with the~~
 1111 ~~requirements of this paragraph.~~

1112 (3) The following transfers are authorized with the
 1113 approval of the Executive Office of the Governor for the
 1114 executive branch or the Chief Justice for the judicial branch,
 1115 subject to the notice and objection ~~review~~ provisions of s.
 1116 216.177:

1117 (a) The transfer of appropriations for operations from
 1118 trust funds in excess of those provided in subsection (2), up to
 1119 \$1 million.

1120 (b) The transfer of positions between budget entities.

1121 (4) The following transfers are authorized with the
 1122 approval of the Legislative Budget Commission. Unless waived by
 1123 the chair and vice chair of the commission, notice of such
 1124 transfers must be provided 14 days before the commission meeting:

1125 (b) The transfer of appropriations for operations from
 1126 trust funds in excess of those authorized ~~provided~~ in subsection
 1127 (2) or subsection (3) ~~this section that exceed the greater of 5~~
 1128 ~~percent of the original approved budget or \$1 million, as~~
 1129 recommended by the Executive Office of the Governor or the Chief
 1130 Justice of the Supreme Court.

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1131 (5) A transfer of funds may not result in the initiation of
1132 a fixed capital outlay project that has not received a specific
1133 legislative appropriation, except that federal funds for fixed
1134 capital outlay projects for the Department of Military Affairs,
1135 which do not carry a continuing commitment on future
1136 appropriations by the Legislature, may be approved by the
1137 Executive Office of the Governor for the purpose received,
1138 subject to the notice, ~~review~~, and objection procedures set forth
1139 in s. 216.177.

1140 (7) The provisions of this section do not apply to the
1141 budgets for the legislative branch.

1142 Section 22. Effective upon this act becoming a law,
1143 subsections (1) and (3) and paragraph (a) of subsection (2) of
1144 section 216.301, Florida Statutes, as amended by section 40 of
1145 chapter 2005-152, Laws of Florida, are amended to read:

1146 216.301 Appropriations; undisbursed balances.--

1147 (1) (a) As of June 30th of each year, for appropriations for
1148 operations only, each department and the judicial branch shall
1149 identify in the state's financial system any incurred obligation
1150 which has not been disbursed, showing in detail the commitment or
1151 to whom obligated and the amounts of such commitments or
1152 obligations. Any appropriation not identified as an incurred
1153 obligation effective June 30th shall revert to the fund from
1154 which it was appropriated and shall be available for
1155 reappropriation by the Legislature.

1156 (b) The undisbursed release balance of any authorized
1157 appropriation, except an appropriation for fixed capital outlay,
1158 for any given fiscal year remaining on June 30 of the fiscal year
1159 shall be carried forward in an amount equal to the incurred

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1160 obligations identified in paragraph (a). Any such incurred
 1161 obligations remaining undisbursed on September 30 shall revert to
 1162 the fund from which appropriated and shall be available for
 1163 reappropriation by the Legislature. The Chief Financial Officer
 1164 will monitor changes made to incurred obligations prior to the
 1165 September 30 reversion to ensure generally accepted accounting
 1166 procedures and legislative intent are followed.

1167 (c) In the event an appropriate identification of an
 1168 incurred obligation is not made and an incurred obligation is
 1169 proven to be legal, due, and unpaid, then the incurred obligation
 1170 shall be paid and charged to the appropriation for the current
 1171 fiscal year of the state agency or the legislative or judicial
 1172 branch affected.

1173 ~~(1)(a) Any balance of any appropriation, except an~~
 1174 ~~appropriation for fixed capital outlay, which is not disbursed~~
 1175 ~~but which is expended shall, at the end of each fiscal year, be~~
 1176 ~~certified by the head of the affected state agency or the~~
 1177 ~~judicial or legislative branches, on or before August 1 of each~~
 1178 ~~year, to the Executive Office of the Governor, showing in detail~~
 1179 ~~the obligees to whom obligated and the amounts of such~~
 1180 ~~obligations. Any such encumbered balance remaining undisbursed on~~
 1181 ~~September 30 of the same calendar year in which such~~
 1182 ~~certification was made shall revert to the fund from which~~
 1183 ~~appropriated, except as provided in subsection (3), and shall be~~
 1184 ~~available for reappropriation by the Legislature. In the event~~
 1185 ~~such certification is not made and an obligation is proven to be~~
 1186 ~~legal, due, and unpaid, then the obligation shall be paid and~~
 1187 ~~charged to the appropriation for the current fiscal year of the~~
 1188 ~~state agency or the legislative or judicial branch affected.~~

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1189 ~~(b) Any balance of any appropriation, except an~~
 1190 ~~appropriation for fixed capital outlay, for any given fiscal year~~
 1191 ~~remaining after charging against it any lawful expenditure shall~~
 1192 ~~revert to the fund from which appropriated and shall be available~~
 1193 ~~for reappropriation by the Legislature.~~

1194 (d) ~~(e)~~ Each department and the judicial branch shall
 1195 maintain the integrity of the General Revenue Fund.
 1196 Appropriations from the General Revenue Fund contained in the
 1197 original approved budget may be transferred to the proper trust
 1198 fund for disbursement. Any reversion of appropriation balances
 1199 from programs which receive funding from the General Revenue Fund
 1200 and trust funds shall be transferred to the General Revenue Fund
 1201 within 15 days after such reversion, unless otherwise provided by
 1202 federal or state law, including the General Appropriations Act.
 1203 The Executive Office of the Governor or the Chief Justice of the
 1204 Supreme Court shall determine the state agency or judicial branch
 1205 programs which are subject to this paragraph. This determination
 1206 shall be subject to the legislative consultation and objection
 1207 process in this chapter. The Education Enhancement Trust Fund
 1208 shall not be subject to the provisions of this section.

1209 (2) (a) The balance of any appropriation for fixed capital
 1210 outlay which is not disbursed but expended, contracted, or
 1211 committed to be expended prior to February 1 of the second fiscal
 1212 year of the appropriation, or the third fiscal year if it is for
 1213 an educational facility as defined in chapter 1013 or for a
 1214 construction project of a state university, shall be certified by
 1215 the head of the affected state agency or the legislative or
 1216 judicial branch on February 1 to the Executive Office of the
 1217 Governor, showing in detail the commitment or to whom obligated

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1218	and the amount of the commitment or obligation. The Executive	
1219	Office of the Governor for the executive branch and the Chief	
1220	Justice for the judicial branch shall review and approve or	
1221	disapprove, consistent with criteria jointly developed by the	
1222	Executive Office of the Governor and the legislative	
1223	appropriations committees, the continuation of such unexpended	
1224	balances. The Executive Office of the Governor shall, no later	
1225	than February <u>28</u> 20 of each year, furnish the Chief Financial	
1226	Officer, the legislative appropriations committees, and the	
1227	Auditor General a report listing in detail the items and amounts	
1228	reverting under the authority of this subsection, including the	
1229	fund to which reverted and the agency affected.	

1230	(3) The President of the Senate and the Speaker of the	
1231	House of Representatives may notify the Executive Office of the	
1232	Governor to retain certified forward balances from legislative	
1233	budget entities until June 30 of the following fiscal year.	

1234	Section 23. Subsection (2) of section 252.37, Florida	
1235	Statutes, is amended to read:	

1236	252.37 Financing.--	
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1237	(2) It is the legislative intent that the first recourse be	
1238	made to funds regularly appropriated to state and local agencies.	
1239	If the Governor finds that the demands placed upon these funds in	
1240	coping with a particular disaster declared by the Governor as a	
1241	state of emergency are unreasonably great, she or he may make	
1242	funds available by transferring and expending moneys appropriated	
1243	for other purposes, by transferring and expending moneys out of	
1244	any unappropriated surplus funds, or from the Budget	
1245	Stabilization Fund. Following the expiration or termination of	
1246	the state of emergency, the Governor may <u>transfer moneys with a</u>	

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1247 budget amendment, subject to approval by the Legislative Budget
 1248 Commission, process a budget amendment under the notice and
 1249 ~~review procedures set forth in s. 216.177 to transfer moneys to~~
 1250 satisfy the budget authority granted for such emergency.
 1251 Section 24. Section 273.02, Florida Statutes, is amended to
 1252 read:
 1253 273.02 Record and inventory of certain property.--The word
 1254 "property" as used in this section means equipment, fixtures, and
 1255 other tangible personal property of a nonconsumable and
 1256 nonexpendable nature. The Chief Financial Officer shall establish
 1257 by rule the requirements for the recording of property in the
 1258 state's financial systems and for the periodic review of property
 1259 for inventory purposes., ~~the value or cost of which is \$1,000 or~~
 1260 ~~more and the normal expected life of which is 1 year or more, and~~
 1261 ~~hardback covered bound books that are circulated to students or~~
 1262 ~~the general public, the value or cost of which is \$25 or more,~~
 1263 ~~and hardback covered bound books, the value or cost of which is~~
 1264 ~~\$250 or more. Each item of property which it is practicable to~~
 1265 ~~identify by marking shall be marked in the manner required by the~~
 1266 ~~Auditor General. Each custodian shall maintain an adequate record~~
 1267 ~~of property in his or her custody, which record shall contain~~
 1268 ~~such information as shall be required by the Auditor General.~~
 1269 ~~Once each year, on July 1 or as soon thereafter as is~~
 1270 ~~practicable, and whenever there is a change of custodian, each~~
 1271 ~~custodian shall take an inventory of property in his or her~~
 1272 ~~custody. The inventory shall be compared with the property~~
 1273 ~~record, and all discrepancies shall be traced and reconciled. All~~
 1274 ~~publicly supported libraries shall be exempt from marking~~
 1275 ~~hardback covered bound books, as required by this section. The~~

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1276 ~~catalog and inventory control records maintained by each publicly~~
 1277 ~~supported library shall constitute the property record of~~
 1278 ~~hardback covered bound books with a value or cost of \$25 or more~~
 1279 ~~included in each publicly supported library collection and shall~~
 1280 ~~serve as a perpetual inventory in lieu of an annual physical~~
 1281 ~~inventory. All books identified by these records as missing shall~~
 1282 ~~be traced and reconciled, and the library inventory shall be~~
 1283 ~~adjusted accordingly.~~

1284 Section 25. Section 273.025, Florida Statutes, is created
 1285 to read:

1286 273.025 Financial reporting for recorded property.--The
 1287 Chief Financial Officer shall establish by rule the requirements
 1288 for the capitalization of property that has been recorded in the
 1289 state's financial systems.

1290 Section 26. Subsections (2) and (5) of section 273.055,
 1291 Florida Statutes, are amended to read:

1292 273.055 Disposition of state-owned tangible personal
 1293 property.--

1294 (2) Custodians shall maintain records to identify each
 1295 property item as to disposition. Such records shall comply with
 1296 rules issued by the Chief Financial Officer ~~Auditor General~~.

1297 (5) All moneys received from the disposition of state-owned
 1298 tangible personal property or from any agreement entered into
 1299 under this chapter must be retained by the custodian and may be
 1300 disbursed for the acquisition of exchange and surplus property
 1301 and for all necessary operating expenditures, ~~and are~~
 1302 ~~appropriated for those purposes.~~ The custodian shall maintain
 1303 records of the accounts into which the money is deposited.

1304 Section 27. Section 274.02, Florida Statutes, is amended to

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1305 read:

1306 274.02 Record and inventory of certain property.--

1307 (1) The word "property" as used in this section means
1308 fixtures and other tangible personal property of a nonconsumable
1309 nature ~~the value of which is \$1,000 or more and the normal~~
1310 ~~expected life of which is 1 year or more.~~

1311 (2) The Chief Financial Officer shall establish by rule the
1312 requirements for the recording of property and for the periodic
1313 review of property for inventory purposes. ~~Each item of property~~
1314 ~~which it is practicable to identify by marking shall be marked in~~
1315 ~~the manner required by the Auditor General. Each governmental~~
1316 ~~unit shall maintain an adequate record of its property, which~~
1317 ~~record shall contain such information as shall be required by the~~
1318 ~~Auditor General. Each governmental unit shall take an inventory~~
1319 ~~of its property in the custody of a custodian whenever there is a~~
1320 ~~change in such custodian. A complete physical inventory of all~~
1321 ~~property shall be taken annually, and the date inventoried shall~~
1322 ~~be entered on the property record. The inventory shall be~~
1323 ~~compared with the property record, and all discrepancies shall be~~
1324 ~~traced and reconciled.~~

1325 Section 28. Paragraph (b) of subsection (3) of section
1326 338.2216, Florida Statutes, is amended to read:

1327 338.2216 Florida Turnpike Enterprise; powers and
1328 authority.--

1329 (3)

1330 (b) Notwithstanding the provisions of s. 216.301 to the
1331 contrary and in accordance with s. 216.351, the Executive Office
1332 of the Governor shall, on July 1 of each year, certify forward
1333 all unexpended funds appropriated or provided pursuant to this

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1334 section for the turnpike enterprise. Of the unexpended funds
1335 certified forward, any unencumbered amounts shall be carried
1336 forward. Such funds carried forward shall not exceed 5 percent of
1337 the original approved ~~total~~ operating budget as defined in s.
1338 216.181(1) of the turnpike enterprise. Funds carried forward
1339 pursuant to this section may be used for any lawful purpose,
1340 including, but not limited to, promotional and market activities,
1341 technology, and training. Any certified forward funds remaining
1342 undisbursed on September 30 ~~December 31~~ of each year shall be
1343 carried forward.

1344 Section 29. Subsection (4) of section 1011.57, Florida
1345 Statutes, is amended to read:

1346 1011.57 Florida School for the Deaf and the Blind; board of
1347 trustees; management flexibility.--

1348 (4) Notwithstanding the provisions of s. 216.301 to the
1349 contrary, ~~the Executive Office of the Governor shall, on July 1~~
1350 ~~of each year, certify forward~~ all unexpended funds appropriated
1351 for the Florida School for the Deaf and the Blind. ~~The unexpended~~
1352 ~~amounts in any fund~~ shall be carried forward and included as the
1353 balance forward for that fund in the approved operating budget
1354 for the following year.

1355 Section 30. Section 215.29, Florida Statutes, is repealed.

1356 Section 31. Except as otherwise expressly provided in this
1357 act, this act shall take effect July 1, 2006.